



CDPP

Australia's Federal Prosecution Service

Commonwealth Director
of Public Prosecutions

Locked Bag A4020
Sydney South NSW 1235
Level 10 175 Liverpool Street
Sydney NSW 2000

DX 11497

SYDNEY DOWNTOWN

Telephone 02 9321 1100

Facsimile 02 9264 8241

www.cdpp.gov.au

26 February 2018

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 (Enhancement Whistleblower Protection) Bill 2017*

Thank you for the opportunity to make a submission in relation to this inquiry.

The Commonwealth Director of Public Prosecutions (CDPP) makes the following submissions:

1. ***Corporations Act s1317AB(1)(c) and Tax Administration Act s14ZZX(1)(c)***

Despite the note at the foot of each of the sections that these subsections do not prevent a whistleblower being subject to criminal liability for conduct that is revealed by his or her disclosure, a carefully crafted disclosure could be tantamount to achieving immunity by self-reporting. For example, a company officer or employee who was complicit in the company's misconduct could craft the disclosure to avoid personal liability. The proposed provisions do not prevent derivative use of the disclosed information, but there may still be circumstances where there is no other admissible evidence. There is an undoubted benefit in encouraging corporate whistleblowers, but we suggest that consideration be given to whether that aim can be achieved without creating a potential loophole for culpable individuals.

On the subject of derivative use, the *Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017* (“CLC (CCC) Bill”) contains an ‘avoidance of doubt’ provision that could usefully be included in the *Treasury Laws Amendment (Enhancement Whistleblower Protection) Bill*. The CLA (CCC) Bill would insert s17H(4) into the Director of Public Prosecutions Act 1983, which would read:

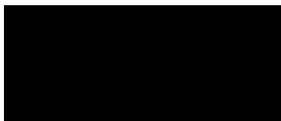
To avoid doubt, this section does not affect the admissibility in evidence of any information or document obtained as an indirect consequence of a disclosure of, or any information contained in, any document mentioned in subsection (1) (ie, documents created in the course of negotiating a deferred prosecution agreement).

2. Penalties

The CDPPP notes that the proposed penalty for victimisation is 2 years’ imprisonment or 120 penalty units or both. That equates to 600 penalty units (currently \$126,000) for a body corporate, which is not a strong deterrent. Compare section 104 (1) of the *Work Health and Safety Act 2011* which makes it an offence to discriminate against a worker who, for example, raises a work healthy and safety issue or gives information to Comcare. The relevant penalty (whether dealt with criminally or civilly) is \$100,000 for an individual and \$500,000 for a body corporate.

The penalty for disclosing a whistleblower’s identity (30 penalty units or imprisonment for 6 months or both) also seems low when one considers that confidentiality is the cornerstone of the whistleblower protection scheme. The offence is comparable to unauthorised disclosure of information by Commonwealth officers contrary to section 70 of the *Crimes Act 1914*, which carries a maximum penalty of 2 years’ imprisonment.

Yours sincerely,



Lisa West
Assistant Director
Legal Business Improvement
Commonwealth Director of Public Prosecutions