

Parliamentary Joint Committee on Corporations and Financial Services

Australian Securities and Investments Commission

Answers to Questions on Notice

Public hearing: 28 February 2020

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**QoN:** 020

**Reference:** Hansard page 32

**Question:**

**Senator O'NEILL:** ... can just I ask, given that there is nowhere currently for people who are in a partnership structure who are engaging in audit to actually safely make claims about sexual harassment, that you consider in your leadership role in the financial sector how that might be accommodated within ASIC. May I also ask, if, on notice, you could provide the committee with an outline, a summary, of the matters about whistleblowing so we can have a sense of what it is that people are coming forward with. Not in any way that compromises any individual—please be assured of that—but I do want to get a sense of the scale of whistleblowing that's going on over the last, say, three years and what the issues are that are emerging. I've got a couple of quick questions, if I can, to finish with—

**Ms HAMMOND:** Chair, with respect to ASIC, I think that senators asked a question starting with the point that people in partnerships have nowhere to complain to with respect to sexual assault or things like that—

**Senator O'NEILL:** Internally, they're complaining.

**Ms HAMMOND:** Not to ASIC perhaps, but I would suspect that under each state's laws and employment laws there are many avenues. So, when you're addressing that question I think—

**Mr Price:** We can try and look to that and provide the pathway where people can complain. The other thing I'd say is that people can contact us on an anonymous basis even if they don't have whistleblower protection, but I understand why, in the absence of explicit legislative protections, people might be a bit concerned to do so.

**Answer:**

***Application of Corporations Act whistleblower protection provisions to audit firms***

ASIC receives reports of misconduct from many sources, including from employees and officers within companies and other business entities. These reports provide ASIC with valuable information and help us enforce the laws we administer and address and prevent harm to consumers.

Employees, officers and certain other people with connections to companies and other incorporated bodies that disclose to ASIC reports of misconduct, an improper state of affairs or circumstances, or breach of the law by the company or incorporated body can access the whistleblower protection provisions in the *Corporations Act 2001* (Corporations Act).

Generally speaking, the whistleblower protection provisions will apply to whistleblower disclosures where the disclosures are about a 'regulated entity' as defined in the Corporations Act. A 'regulated entity' includes:

- a company registered with ASIC under the Corporations Act
- a foreign corporation, that is, a body corporate incorporated overseas that carries on business in Australia, and
- a body corporate incorporated under the law of an Australian state or territory if it is a trading or financial corporation. That is, where the body corporate's trading or financial activities are a sufficiently significant proportion of its overall activities.

The whistleblower protection provisions in the Corporations Act do not apply to reports about other business entities that are not incorporated, such as sole traders or partnerships,

because these entities are not included in the definition of regulated entity. Corporations Act provisions do not generally apply to unincorporated business structures.

If ASIC receives a report from an employee of an audit firm structured as a company alleging misconduct by the audit firm, it is likely that this employee will be able to access the whistleblower protection provisions in the Corporations Act. This is because a company is a regulated entity for the purposes of the whistleblower protection provisions.

If ASIC receives a complaint/report from an employee of an audit firm structured as a partnership alleging misconduct by the audit firm, it is likely that this employee will not be able to access the whistleblower protection provisions in the Corporations Act. This is because a partnership is not a regulated entity for the purposes of the whistleblower protection provisions.

Regardless of whether the employee can access the whistleblower protection provisions in the Corporations Act, ASIC is legally obliged and has robust processes to maintain the employee's confidentiality. Generally, ASIC does not disclose the identity of people who report misconduct to us, unless they consent or we are compelled to do by law.

### **Discrimination**

Claims about discrimination against employees of an audit firms who report instances of sexual harassment by staff of entities audited by the firm are not within ASIC's regulatory remit. The bodies to which claims of discrimination can be reports are:

- Australian Human Rights Commission (Federal); or
- State human rights bodies.

Information on the the relevant tribunals and laws for each State and Territory can be found at [https://unimelb.libguides.com/human\\_rights\\_law/national/australia](https://unimelb.libguides.com/human_rights_law/national/australia).

While we would be concerned by any instances of discrimination, our powers in relation to the quality of audits primarily concern whether an audit was properly executed in accordance with auditing standards and whether relevant auditor independence requirements were met.

### **Complaints and reports**

Our systems are not structured to identify complaints or reports from employees of Deloitte Touche Tohmatsu, Ernst & Young Australia, KPMG Australia or PricewaterhouseCoopers Australia. After making all reasonable inquiries and performing relevant text searches on our database of reports of misconduct, we have not identified reports from employees of audit firms alleging sexual harassment by staff of audited entities, discrimination by firms or similar matters.