

3rd November 2017

Macquarie University submission on the exposure draft of the *Treasury Laws Amendment (Whistleblowers) Bill 2017* (the Bill) and supporting explanatory material.

Lodged on Treasury website

<https://consult.treasury.gov.au/market-and-competition-policy-division/whistleblowers-bill-2017/consultation/intro/>

Macquarie University's Department of Accounting and Corporate Governance is pleased to provide Treasury with its comments on the exposure draft of the *Treasury Laws Amendment (Whistleblowers) Bill 2017* (the Bill) and supporting explanatory material. Macquarie University's response reflects our position as a leading educator to the Australian and global community. This submission has benefited with input from discussions with key constituents.

Broad support for the Bill

Macquarie University broadly supports the Bill however we believe that there are some areas where the Bill could benefit from further amendments and our specific comments follow.

Inadequate time (2 weeks) to comment

Whilst Macquarie University appreciates the existing work that the Government has done on Whistleblowing, and we support a speedy implementation, we do question whether the Government would have benefited from allowing more than just a 2-week comment period from stakeholders. In particular our Submission would have benefited from a wider consultation

Parliamentary Committee's September 2013 Report into Whistleblowing Recommendation not adopted (Explanatory Materials 1.29 – EM)

We also note that some of the Recommendations of the Parliamentary Committee's September 2013 Report into Whistleblowing have been incorporated into the Bill. It would have been useful to know what other Recommendations have not been included in the Bill, and what action the Government proposes to take on those particular Recommendations.

Categories of Whistleblowers should include the Public (EM 1.32)

We question whether the public should be granted some whistleblower protection. For instance, an overheard conversation, or a social media comment can lead to uncovering of wrong doing.

Disclosure to members of Parliament or journalists in specified circumstances not clear (p16 EM)

It is not clear just what is intended by 'specified circumstances for disclosure to members of Parliament or journalists'.

Internal whistleblower discloses need to be broader – e.g. company advisers (1.46 EM)

It is not clear why a professional adviser to a company be it a lawyer, accountant, management consultant etc should not be covered by the whistleblowing protections. The EM would benefit from some of the examples in chapter 2 (e.g. Example 2.4, P42) that deal with tax whistleblowers to explain some of the issues in section 1 for corporate and financial sectors.

Too high a test of gravity and urgency for disclosure to the media or a parliamentarian (1.54EM)

We would see whistleblowing to the media or a parliamentarian as similar to other whistleblowing which does not have such a high test.

Public disclosures on social media and to journalists should be subject to whistleblowing protection (1.58 EM)

Consistent with our comments on 1.54EM we believe that whistleblowing protection should cover disclosures on social media and to journalists.

For larger public companies is there a need for an external whistleblowing system? (1.115 EM)

We can see some merit in requiring large companies say with revenues over \$500 million to have an external independent whistleblowing system.

Why should ASIC be able to provide exemption orders? (1.122 EM)

It is difficult to see how the benefits of good corporate culture and governance can be at all outweighed due to the need for flexibility and un-necessarily high compliance costs. Such an argument effectively defeats the principle that there should be whistleblowing protection.

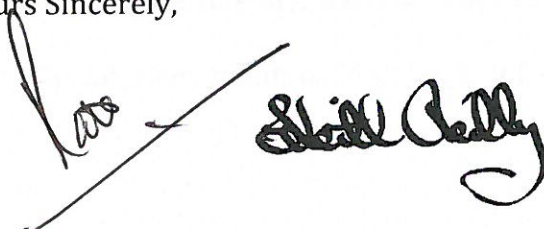
No protection for any person making ATO disclosures (P37 EM and Example 2.5 P42 EM))

Consistent with our comments on 1.54 and 1.58EM) we believe that whistleblowing protection should cover ATO disclosures. Example 2.4 is a good reason for such protection where it could be in the interests of the Australian economy that there should not be a need for the ATO's confidentiality requirements to not allow whistleblowing protection. The Panama Papers illustrate the importance of such economic disclosures and the need for whistleblower protection.

<http://www.abc.net.au/news/2016-04-04/tax-office-investigating-800-australians-in-panama-papers-leak/7296512>

If you require any further information or comment, please contact Keith Reilly - keith.reilly@mq.edu.au

Yours Sincerely,





Appendix A

Extract from Macquarie University 15 November 2013 Submission to the ASX Corporate Governance Council's Review of the Draft third edition of the ASX Corporate Governance Principles and Recommendations and proposed changes to the ASX Listing Rules and Guidance Note 9 Disclosure of Corporate Governance Practices

Inclusion of a Specific Recommendation on Bribes

Given the current media debate on alleged illegal practices of some Australian organisations in paying bribes or facilitation fees to overseas government officers (e.g. Chanticleer 3 October 2013 – Transparency never a strong suit: "The practice of paying kickbacks is rife within Asia, the Middle-East, East Africa and other parts of the world where Australian companies do business."), consideration should be given to making Boards accountable for ensuring that the risk management process inhibits companies from engaging in unacceptable if not also illegal practices. We suggest making an 'if not, why not' requirement for a clear statement of compliance on 'facilitation fees' as otherwise even more prescriptive legislation may be needed. We note that the International Corporate Governance Network's (ICGN) Corporate Governance Principles (2009) state (section 3.4) that its expectation is that there should be stringent policies and procedures in place to avoid company involvement in such behaviour.

Inclusion of a Specific Recommendation on an effective whistle-blowing system

We further note that the ICGN (section 3.7) recommends that companies have a whistle-blowing mechanism in place and the board needs to be satisfied that any concerns are handled effectively. We suggest that this would be a further way of inhibiting corrupt behaviour, using an 'if not, why not' disclosure mechanism.

