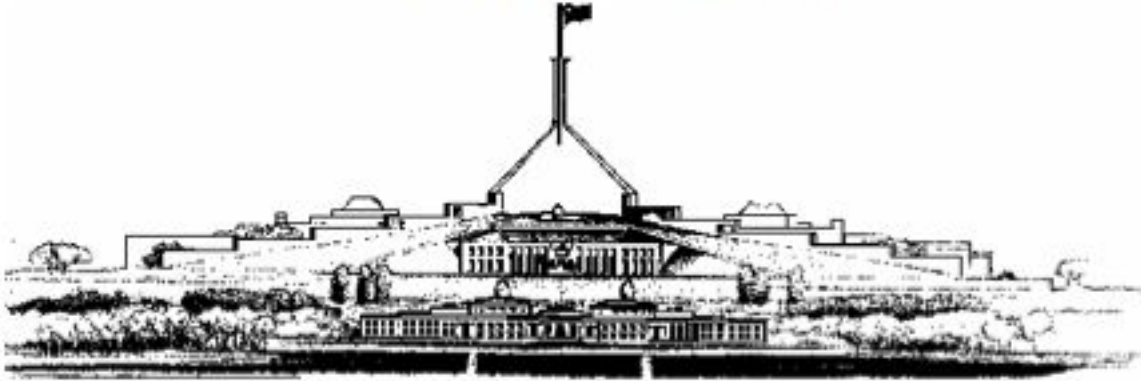




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

BILLS

**Treasury Laws Amendment (Enhancing
Whistleblower Protections) Bill 2018**

Second Reading

SPEECH

Tuesday, 19 February 2019

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Tuesday, 19 February 2019	Source House
Page 6	Proof Yes
Questioner	Responder
Speaker O'Brien, Ted, MP	Question No.

Mr TED O'BRIEN (Fairfax) (12:41): Edmund Burke once said, 'The only thing necessary for the triumph of evil is for good men to do nothing.' In order for us to ensure that wrongdoing—evil, if you like—is made transparent, disclosed and acted upon, men and women must be empowered so they can speak up. That goes to the heart of what the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018 is all about.

Often, in any culture, whether it be corporate, organisational or even family, it comes down to strong leadership to set the right example, for a group's strategy, policies or plans do not matter; what influences a group's culture more than anything is leadership. Now, where whistleblowers often come in is in situations where they work within a culture that either quietly or openly condones activity that is not compliant—that is, at times, unlawful. Unfortunately, good people aren't always the ones in leadership positions. Good people aren't always the ones who have access to the levers that one can pull to influence the culture of an organisation. That is why, through this bill, we seek to ensure that we use our leadership, as a government, to empower those people who themselves lack it—those people who have the moral courage to take a stand and call out wrongdoing where they see it. It's vitally important that those people who display such moral courage are protected under the law.

Indeed, whistleblowing plays a critical role in uncovering corporate and tax misconduct. However, as it stands currently, there are no specific protections for tax whistleblowers, and the range of secrecy and privacy provisions relied upon are often incapable of guaranteeing the protection that one would rightly require. That is why, in the 2016-17 budget the government announced greater protections for those who disclose information about tax misconduct to the ATO—the Australian Taxation Office. This is all about improving the strength and integrity of Australia's tax system.

And so this bill delivers on the government's 2016-17 budget commitment to protect individuals who blow the whistle on tax avoidance behaviour—tax evasion and tax misconduct. We need to make sure that we continue to deliver on our Open Government National Action Plan. This was the government's commitment, released in December 2016, and this government has a proven track record that when it makes such commitments it follows through with teeth. This bill, indeed, provides such teeth for that commitment to open governance within Australia.

The Open Government National Action Plan was developed collaboratively by government and civil society. The plan consists of a package of 15 commitments that aim to advance transparency, accountability, public participation and technological innovation in Australia. It shouldn't go unnoticed that the national action plan was not just created by government alone. It wasn't created by bureaucracy. Indeed, it wasn't created in this bubble here of parliament. But, rather, it was done collaboratively with leaders who are not just in business but in community, because only when we have individuals within civil society also taking responsibility and taking the lead to ensure that organisations have cultures that do not condone noncompliance and unlawful behaviour will we ensure that we have the governance right across our society that the Australian people expect.

Stronger whistleblowing protection is the first commitment of the plan. It's designed to support the objective of enhancing Australia's strong reputation for responsible, transparent and accountable business practices. Indeed, as somebody who spent much of his 20-plus professional years before entering this parliament in business, and particularly in overseas markets, I am very cognisant of Australia's reputation for being transparent. Australian businesses and Australian businesspeople are recognised as people who speak straightforward commonsense and whose word you can trust. That only develops over time, but we need to ensure that we have laws in place that hold all Australians true to that reputation.

And so the government's amendments in this bill will improve access to compensation for whistleblowers who suffer victimisation. I noticed that when the minister spoke to this bill in the House that the example was given that whistleblowers will be able to make a claim for compensation when a body corporate breaches a duty it owes to the whistleblower to prevent a third person engaging in detrimental conduct towards them. Duties may

include, for example, those that arise under employment law or state and territory law. Also, the amendments require a court to consider the period a person is likely to be without employment in circumstances where the detrimental conduct involved termination of employment. To ensure the corporate regime operates as it is intended, disclosures solely about personal employment-related matters are to be excluded from protection—a wise and prudent measure, I would suggest. The emergency disclosure provisions that allow for disclosures to parliamentarians and journalists have been amended to better align with those equivalent provisions in the public sector as appropriate for the corporate context.

Furthermore, the definition of 'journalist' is revised to ensure eligible disclosures may to journalists employed by the Australian Broadcasting Corporation or the Special Broadcasting Service are protected. Again, I see here where the consultation with civil society is getting the balance right to ensure that we are protecting whistleblowers but we are also ensuring that there are adequate protections and definitions so that there is not overreach or confusion.

This bill requires that a statutory review be undertaken of the operation of the protections within both the Corporations Act and the taxation act five years after the commencement date of the amendments. The amendments will also be made to support the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018 and have the effect of increasing financial penalties for offences under the whistleblower regime, the Corporations Act and the taxation act. The amendments seek to increase consistency, where practical, with other Commonwealth whistleblower legislation. The Legislative and Governance Forum for Corporations was consulted in relation to the bill and subsequent amendments and has approved them as required under the Corporations Agreement 2002.

Of course, this bill hasn't been created in isolation from a series of other measures, and nor has it been created without giving due consideration to the need for alignment. Indeed, what we see in the broader context is that the amendments before the House and the protections have formed part of the Corporations Act since 2004 but have been persistently perceived as inadequate. But here's how the bill aligns with other measures, including the whistleblower bill. It provides protections for current and former employees and officers as well as anonymous disclosures. This brings it into alignment with the Public Interest Disclosure Act 2013 and Fair Work (Registered Organisations) Act 2009.

Further, the whistleblower bill repeals and substitutes the good faith test with an objective test requiring that a disclosure has reasonable grounds to suspect the relevant disclosable conduct, again an area of alignment—in this case, alignment with the Public Interest Disclosure Act and Fair Work.

As with the Public Interest Disclosure Act, qualifying disclosures entitle whistleblowers to protection from exposure of their identities and immunity from civil, criminal and administrative liabilities for making the disclosure. Protections are available for whistleblowers who make emergency or public interest disclosures where certain pre-conditions are satisfied. This closely follows the Public Interest Disclosure Act, with adjustment for the corporate context.

The whistleblower bill provides protections for those who suffer threats or actual reprisals consistent with the Fair Work (Registered Organisations) Act 2009. To be clear, protections are available where a threat or reprisal is taken against a person because the offender believes or suspects that that person or any other person may have made, proposes to make or could make a protected disclosure. All regimes allow a whistleblower to seek a range of civil remedies through a court, including an apology, injunction, reinstatement order, compensation for loss or damage and costs. The reforms of the whistleblower bill also provide a definition of detriment that closely follows the Fair Work Act 2009. A whistleblower may claim compensation or other remedies on the basis that they have suffered detriment because a company breached a duty to them. This is to align with the protections in the Fair Work (Registered Organisations) Act 2009—again, an alignment with other bills to ensure that the integrity of the overall system is strengthened.

I pay tribute to those whistleblowers who have had the moral courage to stand for what is right and what is good, and I commend this bill to the House.