

**Submission to the Parliament of Australia  
Parliamentary Joint Committee on Corporations and Financial Services**

**From Patrick Burns, Acting Executive Director  
Taxpayers Against Fraud, Washington, D.C., USA  
[www.taf.org](http://www.taf.org)**

**On a Proposal to Strengthen Australia's Whistleblower Laws  
in the Corporate, Public and Not-for-profit Sectors:**

**Lessons from the United States**

## **Summary**

Australia spends vast sums of money to fund various governmental programs, and it is essential that these funds are not lost to fraud, but are spent on their intended purposes.

In the United States, Federal and State False Claims Act laws, which financially incentivize integrity, have worked to create public-private partnerships which have helped recover more than \$65 billion back to the federal and state governments over the course of the last 30 years.

We applaud Australia for moving forward in your efforts to combat fraud against taxpayers, and we urge you to embrace an incentivized integrity model which has been tested and proven successful.

## **Introduction**

Taxpayers Against Fraud and its sister organization, Taxpayers Against Fraud Education Fund, are U.S.-based nonprofit organizations dedicated to combating fraud against federal and state governments through the promotion of the whistleblower provisions of false claims acts ("FCA's") and other incentivized integrity programs that combat very large tax and securities fraud schemes that undermine faith in the marketplace.

Enactment of strong anti-fraud laws should be an integral part of any debate over addressing national budget challenges. As nations struggle with rising deficits and looming budget shortfalls, programs that assist children, the elderly, and the infirm, as well as programs that strengthen infrastructure, such as roads, bridges and schools, are often put on the chopping block even as anti-fraud tools remain weak or unused. At a time when citizens may be asked to pay more, or get less, it's critical to send a clear signal that fraud will be pursued with vigor.

## The False Claims Act Model

The False Claims Act contains incentivized integrity whistleblower provisions which allow people with evidence of fraud against the government to sue on behalf of the Government.

People who sue under the U.S. False Claims Act are called “relators” or “whistleblowers,” and are eligible for 15 to 30 percent of the amount recovered. Whistleblower awards are paid out of up-to-treble damages levied on fraudster companies. If there is no recovery, there is no award.

Incentivized integrity whistleblower provisions, sometimes called *qui tam* provisions, were created as a way of keeping government small by empowering citizens to come to the aid of law enforcement and bring civil actions on behalf of the government against those who violate our laws.

The core idea behind the False Claims Act is simple and straightforward: if government incentivizes integrity, they will get more of it.

For more than 30 years, this idea has worked remarkably well. The federal False Claims Act has returned over \$55 billion to the U.S. Treasury and over \$10 billion back to the states.

The reason False Claims Act laws work is that whistleblower incentives serve as a counterbalance to the fear of job loss, unemployment, and bankruptcy, which otherwise prevents good, honest people from coming forward to report wrongdoing.

This point cannot be overstated.

The False Claims Act is designed to encourage whistleblowers to come forward, but it is also cleverly crafted to discourage frivolous lawsuits and to relieve litigation burdens from innocent companies.

Whistleblower lawsuits are filed under seal. The procedural and evidentiary burdens of filing a False Claims Act lawsuit generally require a whistleblower to hire an attorney, most of whom work on a contingent fee basis.

What this means is that private attorneys not only screen cases for federal and state governments in the U.S., they also organize, investigate, and develop whistleblower claims so that the defrauded agencies understand how they were ripped off, and the extent to which they were defrauded.

Because so much of the work is done on the front end by the whistleblower and his or her attorney, the government generally saves years of effort and millions of dollars in investigation costs. Just as importantly, the government can read the complaint before investigating in order to quickly determine if a case meets state and federal false claims acts evidence burdens.

Whistleblower cases may be dismissed and/or the whistleblower may not receive an award if:

- The whistleblower bases his complaint on public information available from the news media, the courts, or the government;
- The whistleblower cannot plead clear and specific evidence of fraud;
- Another *qui tam* complaint alleging the same fraud is already pending;
- The whistleblower cannot show that the defendant knowingly submitted a false claim to the government or did so with reckless disregard or indifference to the truth;
- The case is filed outside of the statute of limitations, or;
- The whistleblower engaged in, or initiated, criminal activity in connection with the fraud.

Because whistleblowers and their lawyers only get paid if a case is successful, there are powerful disincentives to bringing frivolous cases. The False Claims Act also contains a fee-shifting provision that requires relators to pay defendants' costs and attorneys' fees if they bring a whistleblower suit that is clearly frivolous or vexatious.

### **Key Talking Points About the U.S. Federal False Claims Act**

- The False Claims Act is the single most important tool used by the U.S. Government to deter and ferret out fraud in the United States.
- Over 80 percent of all the cases brought under the U.S. federal False Claims Act are initiated by whistleblowers, and an even larger percentage of the funds recovered can be ascribed to whistleblower actions.
- The False Claims Act has been so successful that similar incentivized integrity laws have been passed by the U.S. Internal Revenue Service, the U.S. Securities and Exchange Commission (SEC), and the U.S. Commodities Futures Trading Commission (CFTC), as well as by most states.
- A study done by Taxpayers Against Fraud Education Fund concluded that the federal government in the U.S. recovers \$20 back for every \$1 invested in health care related False Claims Act prosecutions and investigations.<sup>1</sup>
- The False Claims Act calls for up to treble damages, which results in collected sums sufficient to make the government whole and to pay whistleblower awards. Treble damages also work as a disincentive for companies to engage in fraud.

---

<sup>1</sup> Source: <http://taf.org/publications/reports/fighting-healthcare-fraud-using-whistleblower-statute-returns-20-every-1>

- Whistleblower awards help forge public-private partnerships between whistleblowers with special and secret knowledge, private lawyers with expertise in developing fraud complaints, and government officials representing the interests of U.S. taxpayers.
- The False Claims Act discourages whistleblowers from bringing cases without benefit of counsel, which means private lawyers actively investigate and screen cases, at no cost to the government.
- The False Claims Act law actively discourages frivolous or vexatious cases. If the court rules that a whistleblower has filed a frivolous or vexatious case, they can be liable for the defendant's litigation costs.
- The economics of False Claims litigation are such that bringing small cases is discouraged.
- In the U.S., less than 200 cases a year are settled or adjudicated to conclusion at either the federal or state level, but these cases recover back to the U.S., and individual states, between \$3 and \$9 billion a year.
- Whistleblowers receive between 15 and 25 percent of a recovery if the government joins the case, and between 25 and 30 percent if the government does not join a case. Under normal circumstance, the minimum amount a whistleblower will be awarded, by law, is 15 percent of the sum recovered.
- Whistleblower awards are proportionate to the amount of money recovered, and the size of the fraud stopped.
- Whistleblower awards do not cost taxpayers a dime; they are paid for by the fraudsters as part of the damages multiplier.
- In the U.S., a number of states have added a provision to their state false claims act law to require fraudsters to pay for reasonable attorneys' fees and expenses necessarily incurred by the state government in bringing a successful case.
- Losing or settling defendants pay whistleblower attorney fees.
- The False Claims Act offers reduced punishments to violators who self-disclose their misconduct.
- Companies typically settle False Claims Act cases and pay millions or even billions of dollars, not because they are innocent, but because they believe that if they took their case before a jury, they would lose, and their economic liabilities would be greater.
- Simple mistakes are not actionable. Under the U.S. False Claims Act, a company has to knowingly commit fraud, or show willful disregard for the truth.

- False Claims Act cases are always evidence-based. Whistleblower complaints based on mere suspicions of fraud will be dismissed under heightened pleading rules that apply to False Claims Act cases. To win a False Claims Act case, the evidence of fraud has to be specific, identifying the "who, what, when, and where" of the fraud.
- Whistleblower awards flow to those who are first to file, so there is never an incentive to wait for a fraud to grow before a whistleblower files a case. On the other hand, whistleblower cases demand evidence and without that evidence, FCA cases will be dismissed.
- Successful whistleblower programs have a private right of action, not because it is used very often, but because without it, there is a tendency for the government to take no action and sweep contracting, management, and collection problems under the rug.

### **Conclusion:**

Taxpayers Against Fraud applauds Australia's Parliamentary Joint Committee on Corporations and Financial Services for looking beyond its borders for replicable success in the war on fraud.

In the United States, incentivized integrity whistleblower programs have paid massive dividends for taxpayers, and have helped expose industry-wide fraud schemes stealing billions of dollars a year from taxpayers and consumers alike.

We are confident that a well-crafted incentivized integrity program in Australia, based on the U.S. model, would produce outstanding results in Australia as well.

February 8, 2017