Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

No. 10, 2019

An Act to amend the law in relation to whistleblowing, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

No. 10, 2019

An Act to amend the law in relation to whistleblowing, and for related purposes

[*Assented to 12 March 2019*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.

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2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 March 2019
2. Schedule 1, Parts 1, 2 and 3	The first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.	1 July 2019
3. Schedule 1, Part 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 1 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2019 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendments

Part 1—Amendment of the Corporations Act 2001

Corporations Act 2001

1 Section 9

Insert:

eligible recipient has the meaning given by section 1317AAC.

eligible whistleblower has the meaning given by section 1317AAA.

regulated entity has the meaning given by section 1317AAB.

State or Territory authority means an authority or other body (whether incorporated or not) that is established or continued in existence by or under a law of a State or Territory.

2 Section 1317AA

Repeal the section, substitute:

1317AA Disclosures qualifying for protection under this Part

Disclosure to ASIC, APRA or prescribed body

(1) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:
  (a) the discloser is an eligible whistleblower in relation to a regulated entity; and
  (b) the disclosure is made to any of the following:
    (i) ASIC;
    (ii) APRA;
    (iii) a Commonwealth authority prescribed for the purposes of this subparagraph in relation to the regulated entity; and
  (c) subsection (4) or (5) applies to the disclosure.

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Note: Section 1317AAD (public interest disclosure and emergency disclosure) and paragraph 1317AB(1)(c) (protection from self-incrimination etc.) may apply to a disclosure covered by this subsection.

Disclosure to eligible recipients

(2) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:
  (a) the discloser is an eligible whistleblower in relation to a regulated entity; and
  (b) the disclosure is made to an eligible recipient in relation to the regulated entity; and
  (c) subsection (4) or (5) applies to the disclosure.

Disclosure to legal practitioner

(3) A disclosure of information by an individual qualifies for protection under this Part if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part.

Disclosable matters

(4) This subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to:
  (a) the regulated entity; or
  (b) if the regulated entity is a body corporate—a related body corporate of the regulated entity.

(5) Without limiting subsection (4), this subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information indicates that any of the following:
  (a) the regulated entity, or an officer or employee of the regulated entity;
  (b) if the regulated entity is a body corporate—a related body corporate of the regulated entity, or an officer or employee of a related body corporate of the regulated entity;

has engaged in conduct that:

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(c) constitutes an offence against, or a contravention of, a provision of any of the following:
  (i) this Act;
  (ii) the ASIC Act;
  (iii) the *Banking Act 1959*;
  (iv) the *Financial Sector (Collection of Data) Act 2001*;
  (v) the *Insurance Act 1973*;
  (vi) the *Life Insurance Act 1995*;
  (vii) the *National Consumer Credit Protection Act 2009*;
  (viii) the *Superannuation Industry (Supervision) Act 1993*;
  (ix) an instrument made under an Act referred to in any of subparagraphs (i) to (viii); or
(d) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
(e) represents a danger to the public or the financial system; or
(f) is prescribed by the regulations for the purposes of this paragraph.

Note: There is no requirement for a discloser to identify himself or herself in order for a disclosure to qualify for protection under this Part.

1317AAA Eligible whistleblowers

An individual is an ***eligible whistleblower*** in relation to a regulated entity if the individual is, or has been, any of the following:
(a) an officer of the regulated entity;
(b) an employee of the regulated entity;
(c) an individual who supplies services or goods to the regulated entity (whether paid or unpaid);
(d) an employee of a person that supplies services or goods to the regulated entity (whether paid or unpaid);
(e) an individual who is an associate of the regulated entity;
(f) for a regulated entity that is a superannuation entity:
  (i) an individual who is a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), custodian (within the meaning of that Act) or

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investment manager (within the meaning of that Act) of the superannuation entity; or

(ii) an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity; or

(iii) an employee of an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii); or

(iv) an individual who supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid); or

(v) an employee of a person that supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid);

(g) a relative of an individual referred to in any of paragraphs (a) to (f);

(h) a dependant of an individual referred to in any of paragraphs (a) to (f), or of such an individual's spouse;

(i) an individual prescribed by the regulations for the purposes of this paragraph in relation to the regulated entity.

1317AAB Regulated entities

Each of the following is a ***regulated entity***:

(a) a company;

(b) a corporation to which paragraph 51(xx) of the Constitution applies;

(c) an ADI (within the meaning of the *Banking Act 1959*), an authorised NOHC (within the meaning of that Act) or a subsidiary of an ADI or an authorised NOHC;

(d) a general insurer (within the meaning of the *Insurance Act 1973*), an authorised NOHC (within the meaning of that Act) or a subsidiary of a general insurer or an authorised NOHC;

(e) a life company (within the meaning of the *Life Insurance Act 1995*), a registered NOHC (within the meaning of that Act) or a subsidiary of a life company or a registered NOHC;

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(f) a superannuation entity or a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity;

(g) an entity prescribed by the regulations for the purposes of this paragraph.

1317AAC Eligible recipients

(1) Each of the following is an ***eligible recipient*** in relation to a regulated entity that is a body corporate:

(a) an officer or senior manager of the body corporate or a related body corporate;

(b) an auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate;

(c) an actuary of the body corporate or a related body corporate;

(d) a person authorised by the body corporate to receive disclosures that may qualify for protection under this Part.

(2) Each of the following is an ***eligible recipient*** in relation to a regulated entity that is a superannuation entity:

(a) an officer of the superannuation entity;

(b) an auditor, or a member of an audit team conducting an audit, of the superannuation entity;

(c) an actuary of the superannuation entity;

(d) an individual who is a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity;

(e) a director of a body corporate that is the trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity;

(f) a person authorised by the trustee or trustees (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity to receive disclosures that may qualify for protection under this Part.

(3) The regulations may prescribe persons or bodies that are ***eligible recipients*** in relation to all regulated entities, or in relation to a class or classes of regulated entities.

(4) Subsections (1), (2) and (3) do not limit each other.

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1317AAD Public interest disclosure and emergency disclosure

(1) A disclosure of information (the ***public interest disclosure***) by an individual (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser has previously made a disclosure of that information (the ***previous disclosure***) that qualifies for protection under this Part under subsection 1317AA(1); and

(b) at least 90 days have passed since the previous disclosure was made; and

(c) the discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related; and

(d) the discloser has reasonable grounds to believe that making a further disclosure of the information in accordance with this subsection would be in the public interest; and

(e) after the end of the period referred to in paragraph (b), the discloser gave the body to which the previous disclosure was made a written notification that:

(i) includes sufficient information to identify the previous disclosure; and

(ii) states that the discloser intends to make a public interest disclosure; and

(f) the public interest disclosure is made to:

(i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or

(ii) a journalist; and

(g) the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient referred to in paragraph (f) of the misconduct or the improper state of affairs or circumstances referred to in subsection 1317AA(4) or the conduct referred to in subsection 1317AA(5), as the case may be.

(2) A disclosure of information (the ***emergency disclosure***) by an individual (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser has previously made a disclosure of that information (the ***previous disclosure***) that qualifies for protection under this Part under subsection 1317AA(1); and

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(b) the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and

(c) the discloser gives the body to which the previous disclosure was made a written notification that:

(i) includes sufficient information to identify the previous disclosure; and

(ii) states that the discloser intends to make an emergency disclosure; and

(d) the emergency disclosure is made to:

(i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or

(ii) a journalist; and

(e) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient referred to in paragraph (d) of the substantial and imminent danger.

(3) In this section:

journalist means a person who is working in a professional capacity as a journalist for any of the following:

(a) a newspaper or magazine;

(b) a radio or television broadcasting service;

(c) an electronic service (including a service provided through the internet) that:

(i) is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); and

(ii) is similar to a newspaper, magazine or radio or television broadcast.

1317AADA Personal work-related grievances

(1) Subsections 1317AA(1) and (2) do not apply to a disclosure of information by an individual (the ***discloser***) to the extent that the information disclosed:

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(a) concerns a personal work-related grievance of the discloser; and

(b) does not concern a contravention, or an alleged contravention, of section 1317AC that involves detriment caused to the discloser or a threat made to the discloser.

Note: A disclosure concerning a personal work-related grievance that is made to a legal practitioner may qualify for protection under this Part under subsection 1317AA(3).

(2) For the purposes of subsection (1), the information disclosed concerns a ***personal work-related grievance*** of the discloser if:

(a) the information concerns a grievance about any matter in relation to the discloser's employment, or former employment, having (or tending to have) implications for the discloser personally; and

(b) the information:

(i) does not have significant implications for the regulated entity to which it relates, or another regulated entity, that do not relate to the discloser; and

(ii) does not concern conduct, or alleged conduct, referred to in paragraph 1317AA(5)(c), (d), (e) or (f).

Examples of grievances that may be personal work-related grievances under paragraph (a) (but subject to paragraph (b)) are as follows:

(a) an interpersonal conflict between the discloser and another employee;

(b) a decision relating to the engagement, transfer or promotion of the discloser;

(c) a decision relating to the terms and conditions of engagement of the discloser;

(d) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

1317AAE Confidentiality of whistleblower's identity

(1) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***discloser***) makes a disclosure of information (the ***qualifying disclosure***) that qualifies for protection under this Part; and

(b) the first person discloses any of the following (the ***confidential information***):

(i) the identity of the discloser;

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(ii) information that is likely to lead to the identification of the discloser; and

(c) the confidential information is information that the first person obtained directly or indirectly because of the qualifying disclosure; and

(d) the disclosure referred to in paragraph (b) is not authorised under subsection (2) or (3).

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

(2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

(a) is made to ASIC; or

(b) is made to APRA; or

(c) is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(d) is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or

(e) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or

(f) is made with the consent of the discloser.

(3) Without limiting subsection (2), a disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

(a) is made by ASIC, APRA or a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); and

(b) is made to a Commonwealth authority, or a State or Territory authority, for the purpose of assisting the authority in the performance of its functions or duties.

(4) Subsection (1) does not apply if:

(a) the disclosure referred to in paragraph (1)(b):

(i) is not of the identity of the discloser; and

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(ii) is reasonably necessary for the purposes of investigating a matter referred to in subsection 1317AA(4) or (5) to which the qualifying disclosure relates; and

(b) the first person takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure referred to in paragraph (1)(b).

Note: In a prosecution for an offence, a defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

3 Subsection 1317AB(1)

Repeal the subsection, substitute:

(1) If a person makes a disclosure that qualifies for protection under this Part:

(a) the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure; and

(c) if the disclosure qualifies for protection under this Part under subsection 1317AA(1) or section 1317AAD—the information is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

Note: Except as provided for by paragraph (c), this subsection does not prevent the person being subject to any civil, criminal or administrative liability for conduct of the person that is revealed by the disclosure.

4 Subsection 1317AB(3)

Repeal the subsection.

5 Paragraphs 1317AC(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) when the first person engages in the conduct, the first person believes or suspects that the second person or any other

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person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(d) the belief or suspicion referred to in paragraph (c) is the reason, or part of the reason, for the conduct.

6 At the end of subsections 1317AC(1), (2) and (3)

Add:

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

7 Subsection 1317AC(5)

After "subsection (2)", insert "or proceedings in relation to a contravention of subsection (2)".

9 Sections 1317AD and 1317AE

Repeal the sections, substitute:

1317AD Compensation and other remedies—circumstances in which an order may be made

(1) A court may make an order under section 1317AE in relation to a person (the ***first person***) if:

(a) the first person engages in conduct (***detrimental conduct***) that:

(i) causes any detriment to another person (the ***second person***); or

(ii) constitutes the making of a threat to cause any such detriment to another person (the ***second person***); and

(b) when the first person engages in the detrimental conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct.

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(2) A court may make an order under section 1317AE in relation to a person (the ***first person***) if:
  (a) the first person is or was an officer or employee of a body corporate; and
  (b) paragraphs (1)(a), (b) and (c) of this section apply to the body corporate because of detrimental conduct engaged in by the body corporate; and
  (c) the first person:
    (i) aided, abetted, counselled or procured the detrimental conduct; or
    (ii) induced, whether by threats or promises or otherwise, the detrimental conduct; or
    (iii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the detrimental conduct; or
    (iv) conspired with others to effect the detrimental conduct.

(2A) A court may make an order under section 1317AE in relation to a person (the ***first person***) that is a body corporate if:
  (a) another person (the ***third person***) engages in conduct (***detrimental conduct***) that:
    (i) causes any detriment to a person (the ***second person***) other than the first person or the third person; or
    (ii) constitutes the making of a threat to cause any such detriment to a person (the ***second person***) other than the first person or the third person; and
  (b) when the third person engages in the detrimental conduct, the third person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
  (c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct; and
  (d) the first person is under a duty to prevent the third person engaging in the detrimental conduct, or a duty to take reasonable steps to ensure that the third person does not engage in the detrimental conduct; and
  (e) the first person fails in part or whole to fulfil that duty.

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Burden of proof

(2B) In proceedings where a person seeks an order under section 1317AE in relation to another person:

(a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:

(i) if subsection (1) of this section applies—paragraph (1)(a); or

(ii) if subsection (2) of this section applies—paragraph (1)(a), as mentioned in paragraph (2)(b); or

(iii) if subsection (2A) of this section applies—paragraphs (2A)(a) and (d); and

(b) if that onus is discharged—the other person bears the onus of proving that the claim is not made out.

Threats

(3) For the purposes of this section, a threat may be:

(a) express or implied; or

(b) conditional or unconditional.

(4) In proceedings for the purposes of section 1317AE, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

1317ADA Detriment

In sections 1317AC and 1317AD, ***detriment*** includes (without limitation) any of the following:

(a) dismissal of an employee;

(b) injury of an employee in his or her employment;

(c) alteration of an employee's position or duties to his or her disadvantage;

(d) discrimination between an employee and other employees of the same employer;

(e) harassment or intimidation of a person;

(f) harm or injury to a person, including psychological harm;

(g) damage to a person's property;

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(h) damage to a person's reputation;
(i) damage to a person's business or financial position;
(j) any other damage to a person.

1317AE Compensation and other remedies—orders that may be made

(1) For the purposes of subsections 1317AD(1), (2) and (2A), a court may make any of the following orders:
(a) an order requiring the first person to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct;
(b) if the court is satisfied that the first person engaged in the detrimental conduct in connection with the first person's position as an employee:
(i) an order requiring the first person to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct, and an order requiring the first person's employer to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct; or
(ii) an order requiring the first person and the first person's employer jointly to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct; or
(iii) an order requiring the first person's employer to compensate the second person, or any other person, for loss, damage or injury as a result of the detrimental conduct;
(c) an order granting an injunction, on such terms as the court thinks appropriate, to prevent, stop or remedy the effects of the detrimental conduct;
(d) an order requiring the first person to apologise to the second person, or any other person, for engaging in the detrimental conduct;
(e) if the second person is or was employed in a particular position and the detrimental conduct wholly or partly consists, or consisted, of the termination, or purported

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termination, of the second person's employment—an order that the second person be reinstated in that position or a position at a comparable level;

(f) if the court thinks it is appropriate—an order requiring the first person to pay exemplary damages to the second person, or any other person;

(g) any other order the court thinks appropriate.

(2) If the detrimental conduct wholly or partly consists, or consisted, of terminating or purporting to terminate a person's employment (including detrimental conduct that forces or forced the person to resign), the court must, in making an order mentioned in paragraph (1)(a) or (b), consider the period, if any, the person is likely to be without employment as a result of the detrimental conduct. This subsection does not limit any other matter the court may consider.

(3) In deciding whether to make an order under paragraph (1)(b) in relation to the first person's employer, the court may have regard to the following:

(a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;

(b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) (whether or not section 1317AI requires the employer to have such a policy)—the extent to which the employer gave effect to that policy;

(c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.

(4) If the court makes an order under subparagraph (1)(b)(ii), the first person and the first person's employer are jointly and severally liable to pay the compensation concerned.

1317AF Interaction between civil proceedings, civil penalties and criminal offences

To avoid doubt, a person may bring civil proceedings for an order under section 1317AE, or civil proceedings for a contravention of subsection 1317AC(1), (2) or (3), in relation to particular conduct,

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even if a prosecution for a criminal offence against section 1317AC in relation to that conduct has not been brought, or cannot be brought.

1317AG Identifying information not to be disclosed etc. to courts or tribunals

If a person (the ***discloser***) makes a disclosure of information that qualifies for protection under this Part, the discloser or any other person is not to be required:

(a) to disclose to a court or tribunal:
  (i) the identity of the discloser; or
  (ii) information that is likely to lead to the identification of the discloser; or

(b) to produce to a court or tribunal a document containing:
  (i) the identity of the discloser; or
  (ii) information that is likely to lead to the identification of the discloser;

except where:

(c) it is necessary to do so for the purposes of giving effect to this Part; or

(d) the court or tribunal thinks it necessary in the interests of justice to do so.

Note: A discloser may also be able to apply to the court or tribunal, in accordance with the rules of the court or tribunal, for an order protecting the discloser's identity.

1317AH Costs only if proceedings instituted vexatiously etc.

(1) This section applies to a proceeding (including an appeal) in a court in relation to a matter arising under section 1317AE in which a person (the ***claimant***) is seeking an order under subsection 1317AE(1).

(2) The claimant must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (3) of this section.

(3) The claimant may be ordered to pay the costs only if:

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(a) the court is satisfied that the claimant instituted the proceedings vexatiously or without reasonable cause; or
(b) the court is satisfied that the claimant's unreasonable act or omission caused the other party to incur the costs.

1317AI Whistleblower policies

(1) A public company must:
(a) have a policy that sets out the matters referred to in subsection (5); and
(b) make that policy available to officers and employees of the company.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

(2) A proprietary company that has been a large proprietary company for any financial year (the ***first financial year***) must, on each day in each later financial year that is at least 6 months after the last day of the first financial year:
(a) have a policy that sets out the matters referred to in subsection (5); and
(b) make that policy available to officers and employees of the company.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

(3) Without limiting subsection (2), a proprietary company that is the trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a registrable superannuation entity (within the meaning of that Act) must:
(a) have a policy that sets out the matters referred to in subsection (5); and
(b) make that policy available to officers and employees of the company.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

(4) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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(5) The matters that a policy must set out for the purposes of paragraph (1)(a), (2)(a) or (3)(a) are:
  (a) information about the protections available to whistleblowers, including protections under this Part; and
  (b) information about to whom disclosures that qualify for protection under this Part may be made, and how they may be made; and
  (c) information about how the company will support whistleblowers and protect them from detriment; and
  (d) information about how the company will investigate disclosures that qualify for protection under this Part; and
  (e) information about how the company will ensure fair treatment of employees of the company who are mentioned in disclosures that qualify for protection under this Part, or to whom such disclosures relate; and
  (f) information about how the policy is to be made available to officers and employees of the company; and
  (g) any matters prescribed by the regulations for the purposes of this paragraph.

1317AJ Exemption orders—class orders for companies

(1) ASIC may, by legislative instrument, make an order in respect of a specified class of company relieving companies in the class from all or specified requirements of section 1317AI.

(2) The order may:
  (a) be expressed to be subject to conditions; and
  (b) be indefinite or limited to a specified period.

1317AK Review of operation of whistleblower protections

(1) The Minister must cause a review to be undertaken of the operation of:
  (a) this Part; and
  (b) Part IVD of the *Taxation Administration Act 1953*.

Note: Part IVD of the *Taxation Administration Act 1953* provides for protections for whistleblowers in relation to tax.

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(2) The review must be conducted as soon as practicable after the end of 5 years after this section commences.

(3) The Minister must cause a written report about the review to be prepared.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

10 Subsection 1317E(1) (after table item 45)

Insert:

45A	subsection 1317AAE(1)	breach of confidentiality of identity of whistleblower
45B	subsections 1317AC(1), (2) and (3)	victimisation or threatened victimisation of whistleblower

11 After subsection 1317G(1G)

Insert:

Whistleblower provisions

(1H) A Court may order a person to pay the Commonwealth a pecuniary penalty if:

(a) a declaration of contravention by the person has been made under section 1317E; and

(b) the contravention is of subsection 1317AAE(1) (confidentiality of whistleblower's identity) or subsection 1317AC(1), (2) or (3) (victimisation or threatened victimisation of whistleblower).

(1J) The maximum amount that the court may order the person to pay for contravening subsection 1317AAE(1) or 1317AC(1), (2) or (3) is:

(a) $200,000 for an individual; or

(b) $1 million for a body corporate.

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12 In the appropriate position in Chapter 10

Insert:

Part 10.32—Transitional provisions relating to the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

1644 Application of amendments

(1) The amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* apply in relation to disclosures that:

(a) are made at or after the time that Part commences (the ***commencement time***); and

(b) relate to matters that occur or occurred before, at or after the commencement time.

(2) Without limiting subsection (1), sections 1317AC, 1317AD and 1317AE, and any other provision of Part 9.4AAA to the extent that it relates to those sections, as in force immediately after the commencement time, also apply at and after the commencement time in relation to a disclosure that:

(a) was made before the commencement time; and

(b) would be a disclosure protected by Part 9.4AAA, if the amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* had been in force at the time the disclosure was made.

Whistleblower policies

(3) Subsections 1317AI(1) to (4), as inserted by item 9 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*, apply on and after the day 6 months after the day that item commences.

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(4) A reference to a financial year in subsection 1317AI(2), as inserted by that item, is a reference to a financial year that ends on or after 30 June 2018.

13 Schedule 3 (table items 338 and 338A)

Repeal the items, substitute:

337A	Subsection 1317AAE(1)	30 penalty units or imprisonment for 6 months, or both.
338	Subsection 1317AC(1), (2) or (3)	120 penalty units or imprisonment for 2 years, or both.
338A	Subsection 1317AI(1), (2) or (3)	60 penalty units.

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Part 2—Amendment of the Taxation Administration Act 1953

Taxation Administration Act 1953

14 Subsection 2(1)

Insert:

eligible recipient has the meaning given by section 14ZZV.

eligible whistleblower has the meaning given by section 14ZZU.

15 After Part IVC

Insert:

Part IVD—Protection for whistleblowers

14ZZT Disclosures qualifying for protection under this Part

(1) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:
  (a) the discloser is an eligible whistleblower in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*); and
  (b) the disclosure is made to the Commissioner; and
  (c) the discloser considers that the information may assist the Commissioner to perform his or her functions or duties under a taxation law in relation to the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity.

(2) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:
  (a) the discloser is an eligible whistleblower in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*); and

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(b) the disclosure is made to an eligible recipient in relation to the entity; and

(c) the discloser has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity; and

(d) the discloser considers that the information may assist the eligible recipient to perform functions or duties in relation to the tax affairs of the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity.

(3) A disclosure of information by an individual qualifies for protection under this Part if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part.

(4) In this section:

tax affairs means affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner.

Note: There is no requirement for a discloser to identify himself or herself in order for a disclosure to qualify for protection under this Part.

14ZZU Eligible whistleblowers

An individual is an ***eligible whistleblower*** in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*) if the individual is, or has been, any of the following:

(a) an officer (within the meaning of the *Corporations Act 2001*) of the entity;

(b) an employee of the entity;

(c) an individual who supplies services or goods to the entity (whether paid or unpaid);

(d) an employee of a person that supplies services or goods to the entity (whether paid or unpaid);

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(e) an individual who is an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity;
(f) a spouse or child of an individual referred to in any of paragraphs (a) to (e);
(g) a dependant of an individual referred to in any of paragraphs (a) to (e), or of such an individual's spouse;
(h) an individual prescribed by the regulations for the purposes of this paragraph in relation to the entity.

14ZZV Eligible recipients

(1) Each of the following is an ***eligible recipient*** in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*):
(a) an auditor, or a member of an audit team conducting an audit, of the entity;
(b) a registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*) who provides tax agent services (within the meaning of that Act) or BAS services (within the meaning of that Act) to the entity;
(c) a person authorised by the entity to receive disclosures that may qualify for protection under this Part;
(d) a person or body prescribed for the purposes of this paragraph in relation to the entity.

(2) If the entity is a body corporate, each of the following is an ***eligible recipient*** in relation to the entity:
(a) a director, secretary or senior manager (within the meaning of the *Corporations Act 2001*) of the body corporate;
(b) any other employee or officer (within the meaning of the *Corporations Act 2001*) of the body corporate who has functions or duties that relate to the tax affairs (within the meaning of section 14ZZT) of the body corporate.

(3) If the entity is a trust, each of the following is an ***eligible recipient*** in relation to the entity:
(a) a trustee of the trust;
(b) a person authorised by a trustee of the trust to receive disclosures that may qualify for protection under this Part.

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(4) If the entity is a partnership, each of the following is an ***eligible recipient*** in relation to the entity:
  (a) a partner in the partnership;
  (b) a person authorised by a partner in the partnership to receive disclosures that may qualify for protection under this Part.

(5) Subsections (1), (2), (3) and (4) do not limit each other.

14ZZW Confidentiality of whistleblower's identity

(1) A person (the ***first person***) commits an offence if:
  (a) another person (the ***discloser***) makes a disclosure of information (the ***qualifying disclosure***) that qualifies for protection under this Part; and
  (b) the first person discloses any of the following (the ***confidential information***):
    (i) the identity of the discloser;
    (ii) information that is likely to lead to the identification of the discloser; and
  (c) the confidential information is information that the first person obtained directly or indirectly because of the qualifying disclosure; and
  (d) the disclosure referred to in paragraph (b) is not authorised under subsection (2).

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:
  (a) is made to the Commissioner; or
  (b) is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  (c) is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or
  (d) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or
  (e) is made with the consent of the discloser.

(3) Subsection (1) does not apply if:

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(a) the disclosure referred to in paragraph (1)(b):
  (i) is not of the identity of the discloser; and
  (ii) is reasonably necessary for the purposes of investigating misconduct, or an improper state of affairs or circumstances, to which the qualifying disclosure relates; and
(b) the first person takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure referred to in paragraph (1)(b).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

14ZZX Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under this Part:
  (a) the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and
  (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure; and
  (c) if the disclosure was a disclosure of information to the Commissioner—the information is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

Note: Except as provided for by paragraph (c), this subsection does not prevent the person being subject to any civil, criminal or administrative liability for conduct of the person that is revealed by the disclosure.

(2) Without limiting subsection (1):
  (a) the person has qualified privilege in respect of the disclosure; and
  (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

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14ZZY Victimisation prohibited

Actually causing detriment to another person

(1) A person (the ***first person***) commits an offence if:
  (a) the first person engages in conduct; and
  (b) the first person's conduct causes any detriment to another person (the ***second person***); and
  (c) when the first person engages in the conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
  (d) the belief or suspicion referred to in paragraph (c) is the reason, or part of the reason, for the conduct.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Threatening to cause detriment to another person

(2) A person (the ***first person***) commits an offence if:
  (a) the first person makes to another person (the ***second person***) a threat to cause any detriment to the second person or to a third person; and
  (b) the first person:
    (i) intends the second person to fear that the threat will be carried out; or
    (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  (c) the first person makes the threat because a person:
    (i) makes a disclosure that qualifies for protection under this Part; or
    (ii) may make a disclosure that would qualify for protection under this Part.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Threats

(3) For the purposes of subsection (2), a threat may be:

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(a) express or implied; or
(b) conditional or unconditional.

(4) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

14ZZZ Compensation and other remedies—circumstances in which an order may be made

(1) A court may make an order under section 14ZZZA in relation to a person (the ***first person***) if:
(a) the first person engages in conduct (***detrimental conduct***) that:
(i) causes any detriment to another person (the ***second person***); or
(ii) constitutes the making of a threat to cause any such detriment to another person (the ***second person***); and
(b) when the first person engages in the detrimental conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct.

(2) A court may make an order under section 14ZZZA in relation to a person (the ***first person***) if:
(a) the first person is or was an officer (within the meaning of the *Corporations Act 2001*) or employee of a body corporate; and
(b) paragraphs (1)(a), (b) and (c) of this section apply to the body corporate because of detrimental conduct engaged in by the body corporate; and
(c) the first person:
(i) aided, abetted, counselled or procured the detrimental conduct; or
(ii) induced, whether by threats or promises or otherwise, the detrimental conduct; or

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(iii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the detrimental conduct; or

(iv) conspired with others to effect the detrimental conduct.

(2A) A court may make an order under section 14ZZZA in relation to a person (the ***first person***) that is a body corporate if:

(a) another person (the ***third person***) engages in conduct (***detrimental conduct***) that:

(i) causes any detriment to a person (the ***second person***) other than the first person or the third person; or

(ii) constitutes the making of a threat to cause any such detriment to a person (the ***second person***) other than the first person or the third person; and

(b) when the third person engages in the detrimental conduct, the third person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct; and

(d) the first person is under a duty to prevent the third person engaging in the detrimental conduct, or a duty to take reasonable steps to ensure that the third person does not engage in the detrimental conduct; and

(e) the first person fails in part or whole to fulfil that duty.

Burden of proof

(2B) In proceedings where a person seeks an order under section 14ZZZA in relation to another person:

(a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:

(i) if subsection (1) of this section applies— paragraph (1)(a); or

(ii) if subsection (2) of this section applies— paragraph (1)(a), as mentioned in paragraph (2)(b); or

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(iii) if subsection (2A) of this section applies—paragraphs (2A)(a) and (d); and

(b) if that onus is discharged—the other person bears the onus of proving that the claim is not made out.

Threats

(3) For the purposes of this section, a threat may be:

(a) express or implied; or

(b) conditional or unconditional.

(4) In proceedings for the purposes of section 14ZZZA, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

14ZZZAA Detriment

In sections 14ZZY and 14ZZZ, ***detriment*** includes (without limitation) any of the following:

(a) dismissal of an employee;

(b) injury of an employee in his or her employment;

(c) alteration of an employee's position or duties to his or her disadvantage;

(d) discrimination between an employee and other employees of the same employer;

(e) harassment or intimidation of a person;

(f) harm or injury to a person, including psychological harm;

(g) damage to a person's property;

(h) damage to a person's reputation;

(i) damage to a person's business or financial position;

(j) any other damage to a person.

14ZZZA Compensation and other remedies—orders that may be made

(1) For the purposes of subsections 14ZZZ(1), (2) and (2A), a court may make any of the following orders:

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(a) an order requiring the first person to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct;

(b) if the court is satisfied that the first person engaged in the detrimental conduct in connection with the first person's position as an employee:

(i) an order requiring the first person to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct, and an order requiring the first person's employer to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct; or

(ii) an order requiring the first person and the first person's employer jointly to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct; or

(iii) an order requiring the first person's employer to compensate the second person, or any other person, for loss, damage or injury as a result of the detrimental conduct;

(c) an order granting an injunction, on such terms as the court thinks appropriate, to prevent, stop or remedy the effects of the detrimental conduct;

(d) an order requiring the first person to apologise to the second person, or any other person, for engaging in the detrimental conduct;

(e) if the second person is or was employed in a particular position and the detrimental conduct wholly or partly consists, or consisted, of the termination, or purported termination, of the second person's employment—an order that the second person be reinstated in that position or a position at a comparable level;

(f) if the court thinks it is appropriate—an order requiring the first person to pay exemplary damages to the second person, or any other person;

(g) any other order the court thinks appropriate.

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(2) If the detrimental conduct wholly or partly consists, or consisted, of terminating or purporting to terminate a person's employment (including detrimental conduct that forces or forced the person to resign), the court must, in making an order mentioned in paragraph (1)(a) or (b), consider the period, if any, the person is likely to be without employment as a result of the detrimental conduct. This subsection does not limit any other matter the court may consider.

(3) In deciding whether to make an order under paragraph (1)(b) in relation to the first person's employer, the court may have regard to the following:

(a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;

(b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) of the *Corporations Act 2001* (whether or not section 1317AI of that Act requires the employer to have such a policy)—the extent to which the employer gave effect to that policy;

(c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.

(4) If the court makes an order under subparagraph (1)(b)(ii), the first person and the first person's employer are jointly and severally liable to pay the compensation concerned.

14ZZZB Identifying information not to be disclosed etc. to courts or tribunals

If a person (the ***discloser***) makes a disclosure of information that qualifies for protection under this Part, the discloser or any other person is not to be required:

(a) to disclose to a court or tribunal:

(i) the identity of the discloser; or

(ii) information that is likely to lead to the identification of the discloser; or

(b) to produce to a court or tribunal a document containing:

(i) the identity of the discloser; or

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(ii) information that is likely to lead to the identification of the discloser;

except where:

(c) it is necessary to do so for the purposes of giving effect to this Part; or

(d) the court or tribunal thinks it necessary in the interests of justice to do so.

Note: A discloser may also be able to apply to the court or tribunal, in accordance with the rules of the court or tribunal, for an order protecting the discloser's identity.

14ZZZC Costs only if proceedings instituted vexatiously etc.

(1) This section applies to a proceeding (including an appeal) in a court in relation to a matter arising under section 14ZZZA in which a person (the ***claimant***) is seeking an order under subsection 14ZZZA(1).

(2) The claimant must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (3) of this section.

(3) The claimant may be ordered to pay the costs only if:

(a) the court is satisfied that the claimant instituted the proceedings vexatiously or without reasonable cause; or

(b) the court is satisfied that the claimant's unreasonable act or omission caused the other party to incur the costs.

14ZZZD Interaction between civil proceedings and criminal offences

To avoid doubt, a person may bring civil proceedings under section 14ZZZA in relation to conduct even if a prosecution for a criminal offence against section 14ZZY in relation to the conduct has not been brought, or cannot be brought.

14ZZZE Compensation for acquisition of property

(1) If the operation of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within

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the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) Payments under this section are to be made out of money appropriated by the Parliament by another Act.

(4) To avoid doubt, section 16 does not apply to a payment under this section.

16 Application

The amendments made by this Part apply in relation to disclosures that:

(a) are made at or after the time this Part commences (the ***commencement time***); and

(b) relate to matters that occur or occurred before, at or after the commencement time.

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Part 3—Other amendments

Banking Act 1959

17 Part VIA (after the heading)

Insert:

Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

18 Division 1 of Part VIA

Repeal the Division.

19 Division 2 of Part VIA (heading)

Repeal the heading.

20 Application

Despite the repeal of Division 1 of Part VIA of the *Banking Act 1959* by item 18, that Division continues to apply, at and after the commencement of this item, in relation to:

(a) disclosures of information made before that commencement; and

(b) conduct referred to in subsection 52C(1) of the *Banking Act 1959*, as in force immediately before that commencement, that is engaged in before that commencement; and

(c) a threat referred to in subsection 52C(2) of the *Banking Act 1959*, as in force immediately before that commencement, that is made before that commencement.

Insurance Act 1973

21 Division 4 of Part IIIA (after the heading)

Insert:

Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

22 Subdivision A of Division 4 of Part IIIA

Repeal the Subdivision.

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23 Subdivision B of Division 4 of Part IIIA (heading)

Repeal the heading.

24 Application

Despite the repeal of Subdivision A of Division 4 of Part IIIA of the *Insurance Act 1973* by item 22, that Subdivision continues to apply, at and after the commencement of this item, in relation to:

(a) disclosures of information made before that commencement; and

(b) conduct referred to in subsection 38C(1) of the *Insurance Act 1973*, as in force immediately before that commencement, that is engaged in before that commencement; and

(c) a threat referred to in subsection 38C(2) of the *Insurance Act 1973*, as in force immediately before that commencement, that is made before that commencement.

Life Insurance Act 1995

25 Division 5 of Part 7 (after the heading)

Insert:

Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

26 Subdivision A of Division 5 of Part 7

Repeal the Subdivision.

27 Subdivision B of Division 5 of Part 7 (heading)

Repeal the heading.

28 Application

Despite the repeal of Subdivision A of Division 5 of Part 7 of the *Life Insurance Act 1995* by item 26, that Subdivision continues to apply, at and after the commencement of this item, in relation to:

(a) disclosures of information made before that commencement; and

(b) conduct referred to in subsection 156C(1) of the *Life Insurance Act 1995*, as in force immediately before that

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commencement, that is engaged in before that commencement; and

(c) a threat referred to in subsection 156C(2) of the *Life Insurance Act 1995*, as in force immediately before that commencement, in relation to such disclosures, that is made before that commencement.

Superannuation Industry (Supervision) Act 1993

29 Part 29A (after the heading)

Insert:

Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

30 Division 1 of Part 29A

Repeal the Division.

31 Division 2 of Part 29A (heading)

Repeal the heading.

32 Application

Despite the repeal of Division 1 of Part 29A of the *Superannuation Industry (Supervision) Act 1993* by item 30, that Division continues to apply, at and after the commencement of this item, in relation to:

(a) disclosures of information made before that commencement; and

(b) conduct referred to in subsection 336C(1) of the *Superannuation Industry (Supervision) Act 1993*, as in force immediately before that commencement, that is engaged in before that commencement; and

(c) a threat referred to in subsection 336C(2) of the *Superannuation Industry (Supervision) Act 1993*, as in force immediately before that commencement, that is made before that commencement.

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Part 4—Contingent amendments

Corporations Act 2001

33 In the appropriate position in subsection 1317E(3)

Insert:

Subsection 1317AAE(1)	breach of confidentiality of identity of whistleblower	uncategorised
Subsections 1317AC(1), (2) and (3)	victimisation or threatened victimisation of whistleblower	uncategorised

34 At the end of Part 10.32

Add:

1644A Application of amendments relating to penalties

The amendments made by Part 4 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of that Part.

35 Schedule 3 (table items dealing with subsections 1317AC(1), (2) and (3) and subsection 1317AE(1))

Repeal the items, substitute:

Subsection 1317AAE(1)	6 months imprisonment
Subsections 1317AC(1), (2) and (3)	2 years imprisonment
Subsections 1317AI(1), (2) and (3)	60 penalty units

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Taxation Administration Act 1953

36 Subsection 14ZZW(1) (penalty)

Omit “30 penalty units”, substitute “60 penalty units”.

37 Subsections 14ZZY(1) and (2) (penalties)

Omit “120 penalty units”, substitute “240 penalty units”.

38 Application of amendments

The amendments of the *Taxation Administration Act 1953* made by this Part apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of this Part.

[*Minister’s second reading speech made in—*
Senate on 7 December 2017
House of Representatives on 14 February 2019]

(291/17)

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