



Significant changes to Federal Whistleblower laws commencing on 1 July 2019

KEY POINTS

- The Federal Government has made changes to Australia's existing whistleblower protection regime
- The laws will commence on **1 July 2019** and will apply to public companies and large proprietary companies as defined under the *Corporations Act 2001* (Cth). Public companies are companies that can sell shares to or seek loans from the public. A large proprietary company must meet at least **two** of the following criteria to be a large proprietary company:
 1. Have a consolidated revenue (which includes revenue of entities it controls) of \$25 million for the financial year
 2. The value of the company's consolidated gross assets (which includes gross assets of entities it controls) is \$12.5 million at the end of the financial year
 3. The company (and entities it controls) has 50 or more employees
- The laws will simplify existing laws by consolidating a number of laws into one uniform framework
- There will be several significant changes summarised below including expanding categories of those eligible for protection, expanding disclosures which qualify for protection, allowing anonymous disclosures, expanding protections for whistleblowers, higher penalties for companies who breach laws and requiring companies covered by the laws to have a whistleblower policy
- Members who are either public companies or large proprietary companies should have a whistleblower policy in place by **1 January 2020**. **Members who fail to comply face significant civil and criminal penalties.**

Dear Member,

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) (the Act) has been passed by the Federal Government and will come into effect on **1 July 2019**.

This means that there will be significant changes to Australia's current whistleblower regime.

Who does this apply to?

The laws will apply to protected disclosures made that relate to public companies and large proprietary companies.

Public companies are companies that can sell shares to or seek loans from the public.

A large proprietary company must meet at least **two** of the following criteria to be a large proprietary company:

1. Have a consolidated revenue (which includes revenue of entities it controls) of \$25 million for the financial year
2. The value of the company's consolidated gross assets (which includes gross assets of entities it controls) is \$12.5 million at the end of the financial year
3. The company (and entities it controls) has 50 or more employees.

For example, these laws would apply to a large commercial Producer who sells shares in their company to the public or has a consolidated revenue of \$25 million and 50 or more employees in a financial year.

Whistleblower policy

Under the Act, public companies and large proprietary companies **must** have a whistleblower policy by **1 January 2020**.

Companies who fail to comply with the laws, face significant civil and criminal penalties.

What do Members have to do?

Members who are public companies and large proprietary companies should have a whistleblower policy which must include:

- Protections available to whistleblowers
- How protected disclosures can be made
- The relevant contact persons to make protected disclosures to
- How protected disclosures will be investigated
- How companies will ensure employees are treated fairly
- How companies will make the policy available to officers and employees.

Members **must** also make their whistleblower policy available to all employees and company officers.

Failing to do so could have serious consequences, including \$126,000 fines for companies and \$12,600 fines for individuals.

Key changes are summarised below.

Key changes

1. **Simplifying existing laws:** The Act combines a number of existing regimes into one uniform framework. The Act also extends whistleblower laws to companies covered by the *National Consumer Credit Protection Act 2009* (Cth) and the *Financial Sector (Collection of Data) Act 2001* (Cth).
2. **Additions to 'eligible whistleblowers':** The Act protects current employees and extends protections to former employees, officers or suppliers.
3. **Extension of information qualifying as protected disclosures:** Information relating to **'misconduct or an improper state of affairs'** in relation to a 'whistleblower regulated entity' (all companies and superannuation entities covered by the Act) is protected. This includes:
 - (i) conduct that amounts to an offence or contravention of Australia's corporations and financial services legislation or
 - (ii) conduct that 'represents a danger to the public or financial system'.

This protection applies broadly and includes misconduct by officers and employees and will cover information such as exploiting 'a loophole in the law that creates vulnerability in a government program' for example.

This broadens the current laws which only apply protections to disclosures relating to

breaches of Corporations legislation.

4. **Exclusions:** The Act excludes 'personal work-related grievances' from categories of protected information which includes:

(i) a decision relating to the engagement, transfer or promotion of a person disclosing information or

(ii) a decision to suspend, terminate or discipline a disclosing person.

However, bullying and harassment complaints may have significant implications and may fall under the whistleblower regime, for example, a complaint made in relation to a CEO.

Please contact LPA for further advice in these circumstances.

5. **Anonymous disclosures:** The Act removes the requirement for a whistleblower to provide their name to qualify for protection and permits anonymous disclosures.
6. **Removal of 'good faith' requirement:** The Act will remove the requirement for a whistleblower to act in 'good faith' when making a disclosure and instead, the whistleblower must only have 'reasonable grounds' to suspect that 'misconduct or an improper state of affairs exists'.
7. **Public interest and emergency disclosures:** A significant change to the current laws will be that public interest and emergency disclosures may be made in certain circumstances to members of parliament or journalists. Specific requirements must be met before these disclosures can be made.
8. **Protection against victimisation/retaliation:** The Act expands protections for whistleblowers. It will be unlawful to engage in conduct that causes 'detriment' to a whistleblower (or an associate of a whistleblower). 'Detriment' includes dismissal, altering a whistleblower's position, harassment or damaging a whistleblower's reputation. There will be no need to establish that a disclosure has been made and will apply to situations where a company has a belief that a person may make, proposes to make or could make a protected disclosure.
9. **Liability for employers/increased penalties:** The Act gives courts the power to make orders against companies for third party conduct including holding employers liable for conduct of employees. Under the Act, courts may also grant orders of compensation, criminal sanctions and civil penalties. A court may also order that an employer reinstate an employee to their previous job.

For more information

For further enquiries, please contact **Claire Seremetis**, Workplace Relations Advisor via [email](#) or call (03) 8614 2000.



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