

Article Information

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Service: Employment & Labour, Whistleblower Protections

Extended private sector whistleblowing protection scheme, with amendments, becomes law

Moving at a sometimes glacial pace, reform and extension of private-sector whistleblowing laws has finally passed parliament, and will likely commence on 1 July 2019.

Our article on the extension of private sector whistleblower protection laws [from August last year](#) sets out the new scheme and the significant impacts it will have. The scheme, introduced by the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2018* has now passed both houses of Parliament, and subject to royal assent, will commence on 1 July 2019.

In late 2018, some further refinements to the scheme were introduced and now form part of the scheme. Key refinements (to be read in conjunction with our earlier article) are:

- In addition to emergency disclosures, the scheme now provides for a form of protected “public interest” disclosure to a member of Parliament or a journalist in certain circumstances after 90 days have lapsed after a protected disclosure has first been made, and where the discloser does not have reasonable grounds to believe that action is being taken to address the matter. The information that can be disclosed under this new provision must be no greater than is necessary to inform the recipient of the protected disclosure under the scheme.
- The scope of “emergency disclosures” has been narrowed by requiring that the discloser have reasonable grounds to believe that the information concerned a substantial and imminent danger to the health or safety of one or more persons or to the natural environment. The original provision allowed for emergency disclosures where there was a danger to the financial system, which has been removed.
- A key weakness of the original scheme was that it would cover purely-personal issues that should not require protection (because they would not ordinarily be expected to lead to any victimisation). So, the recent amendments exclude disclosing a “personal work-related grievances” from the protection of the scheme, except where it gives rise to a subsequent disclosure that a grievance of that kind has *led to* victimisation, which will bring the situation back within the scheme protections.
- The scheme now includes positive duty on a corporation to take steps to avoid a discloser being subject to detrimental conduct by management or other employees, and allows for compensation where the duty has not been met to an adequate standard.
- The scheme establishes that persons seeking compensation in relation to detrimental conduct need only establish evidence to show a reasonable possibility that the alleged conduct has occurred. If this obligation has been met, the other person (or body corporate) has the obligation to prove the claim has not been made out.
- The Act now provides for increased penalties for breaches of the legislation. In particular, where there has been a breach of the whistleblower legislation in relation to tax information, penalties have doubled.

Companies will have six months from commencement of the new scheme to ensure they have a complying policy.

The ALP has now upped the ante by publishing an election policy platform that includes further extending the scheme to provide for ‘bounties’ (payment to whistleblowers that reflect penalties imposed on corporations engaging in wrongdoing), and the introduction of a Whistleblower Protection Authority as a regulator to advise on and eventually independently enforce the new scheme under a separate piece of legislation that will harmonise corporate whistleblowing laws with trade-union whistleblowing provisions. Stay tuned ...

If you have any questions about the requirements of the Act, or require any assistance with your [Whistleblowing](#) Policy,



please contact a member of Piper Alderman's Employment Relations team.