

Alert

EMPLOYMENT LAW

New Whistleblower Protection Laws are Coming

Employers, get ready to comply with the latest protection requirements for whistleblowers in Australia

By Jodie Bradbrook

Australia's new whistleblower protection laws will come into operation on 1 July 2019, expanding the current protections and imposing new requirements on some employers. This article will discuss how the federal whistleblower protection laws will affect your company.

What are whistleblower protection laws?

Whistleblower protection exists in Federal, State and Territory laws around Australia.

Whistleblowers are known as people who give information to the police or other authorities (such as [ASIC, the Australian Securities and Investments Commission](#)) about an organisation's activities. Usually, those activities are harmful, immoral or illegal, for example, corruption, environmental damage or anti-competitive behaviour.

Whistleblower protection exists in certain situations: they are given immunity from being sued in civil actions or prosecuted in criminal proceedings if they have disclosed information in the

right circumstances. State and Federal legislation sets out these protections.

The aim is to help people to make disclosures that are in the public interest.

What protections are in the Federal whistleblower laws?

The current Federal laws apply protections in circumstances where:

- Only the people working in an organisation can make disclosures;
- Disclosures can be made to company auditors, senior officers, certain other authorised employees, or to [ASIC](#);
- When making the disclosure, the whistleblower must identify themselves;
- There must be reasonable grounds to suspect that the organisation has breached Australian company laws; and
- The disclosure must be honest and genuine.

In recent years, however, there has been an increased public desire for companies to be more accountable for their activities, for example, the Royal Commissions into banking and aged care, and rising environmental political activity.

The knock-on effect is that the Australian government has acted to widen the scope of the federal whistleblower protection laws.

What are the new whistleblower protection laws?

From 1 July 2019, the new laws will:

- Protect a broader group of informants, including current and former employees, officers and contractors, as well as their spouses and dependents;
- Allow disclosures to company officers, senior managers, auditors and actuaries. If the informant believes that not enough is being done to fix the problem, in some circumstances they may also disclose to the media or a member of parliament;

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- Allow anonymous disclosures. But regardless of whether the disclosure is anonymous, the company must protect the anonymity of the informant;
- Require that certain companies introduce whistleblowing policies, including public companies, companies with 100 or more employees, and those with significant assets or significant gross revenue; and
- Continue to require that disclosures are honest and genuine. Disclosures must concern criminal activity, breaches of Australian company laws, breaches of insurance laws, or breaches of superannuation laws. They can also be about public dangers or dangers to the Australian financial system.

Penalties are significant fines for individuals and companies. There are also penalties for threatening or victimisation of a whistleblower.

What isn't covered by the new laws?

The new Federal laws will not protect people who:

- Blow the whistle against small companies; and
- Make disclosures about personal work issues.

Some State or Territory laws may protect whistleblowers in these situations, for example, State anti-victimisation laws or equal opportunity laws.

What should a whistleblower policy include?

We recommend that you seek legal advice from us to work out whether your company needs a whistleblowing policy. Even if your business falls outside the thresholds, it may be worth putting a policy in place if you're expecting to meet the thresholds within the next few years.

A whistleblowing policy should contain:

- A definition of a whistleblower;
- An explanation of whistleblower protection;
- How Federal laws protect whistleblowers;
- A list of people who can make disclosures;
- A list of people to whom disclosures can be made (including their contact details, where relevant);
- The type of activities that can be disclosed;
- Any procedures for making a disclosure;
- Information about support and protection of whistleblowers and information about their rights; and

- Investigation procedures

Information about how employees can access the policy.

What to do next

Regardless of the size of your organisation, we recommend that you get in touch to discuss whether your organisation needs a whistleblower policy. It's also an excellent reminder to review related policies, such as anti-discrimination, grievance, anti-victimisation and workplace health and safety policies.



MORE INFO

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