



Australia's Whistleblower Reforms – Update

The Australian Whistleblower Legislation is pending Royal Assent.

The Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018 passed both Houses on 19 February 2019 and will be referred to the Governor General for Royal Assent.

These amendments seek to streamline the existing Australian Whistleblower regime.

This update will focus on the key changes made to Part 9.4AAA of the *Corporations Act*, and the *Tax Administration Act*. The Amendments include changes to the types of disclosures protected, expanding the definition of eligible Whistleblowers, eligible recipients of disclosures, protections for Whistleblowers, and creating an internal Whistleblower policy requirement for Large Proprietary Companies.

Deloitte Whistleblower Service can assist your organisation to manage misconduct reports securely and efficiently. Deloitte Halo was designed to enable compliance with the new legislation and can provide a secure and flexible means of capturing reported

disclosures. Deloitte Halo provides a smarter solution for managing misconduct complaints and Whistleblowing.

Recognising the cultural challenge and personal risk for those coming forward to report corporate misconduct, the Australian Government has amended the *Corporations Act*, and created obligations under the *Tax Administration Act* for companies surrounding Whistleblowers. The Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018 (the Amendments) was passed by the Senate on 6 December 2018, and passed by the House of Representatives 19 February 2019. Following endorsement for Royal Assent it is anticipated the Amendments will come into effect on 1 July 2019.

The Amendments seek to provide greater opportunities for eligible Whistleblowers to report misconduct. Following a long public and political debate and a number of pieces of work undertaken by parliamentary committees including the Parliamentary Joint Committee on Corporations and Financial Services, the new legislation is largely focussed on enabling Disclosures to be made more readily whilst offering Whistleblowers greater protections.

The new legislation expands protections to a broader class of persons and increases the types of disclosures which will be protected. The legislation also makes it easier for Whistleblowers to seek redress for detriment or damage. New civil penalties are created to make enforcement action easier, and criminal penalties have also been increased. All large proprietary companies will now be required to have an internal Whistleblower policy made available to all officers and employees.

The legislation includes allowing emergency disclosures to Parliamentarians and the media in certain circumstances.

Whistleblowers serve an essential role in detecting misconduct and corrupt behaviour, under this new Whistleblower legislation, they are awarded greater protections, thus promoting a culture of accountability, transparency, and integrity within the corporate landscape.

Key changes under the new legislation:

1. Disclosures

- Disclosures can be made by a broader class of eligible Whistleblowers
- 'Workplace grievances' are specifically not protected under the *Corporations Act* unless they are a grievance raised under the civil remedy or victimisation provision
- The 'good faith' requirement for disclosures is replaced by an objective test requiring the person disclosing to have 'reasonable grounds to suspect' misconduct or other disclosable matters.

2. Eligible recipients of disclosures

- The definition of 'eligible recipient' is now an 'officer or senior manager of the body corporate or related body corporate'.

3. Protections for the Whistleblower

- The protections for whistleblowers have been expanded to include anonymous disclosures
- Companies and individuals are liable for substantial civil and criminal penalties for the contravention in relation to Whistleblower confidentiality and Detrimental Conduct

4. Internal Whistleblower policy requirement

- A large proprietary company, as defined under the *Corporations Act*, must have an internal Whistleblower Policy, which is required to be made available to all employees and officers.

Next Steps

Following Royal Assent it is anticipated the Amendments will come into effect on 1 July 2019.

So it is time to start thinking about reviewing your internal Whistleblower policy and reporting mechanisms. Ultimately, the challenge now for organisations is to manage this shift in the reporting of misconduct.

Deloitte manages an independent whistleblowing service for more than 100 clients across Australia and has done so for over 14 years. The lessons we have learnt have enabled us to provide a bespoke service to our clients to enable their compliance to, both the current and the proposed changes to the legislation.

In our experience, most organisations are not equipped with the appropriate internal resources to manage misconduct reporting effectively. Deloitte Halo was designed to enable compliance with legislative amendments by providing a secure and flexible means of capturing reported disclosures.

Deloitte Halo clients are provided with the facilities to outsource disclosure-taking, manage disclosures received internally and triage Whistleblower reports and communications. The information security and case tracking features of Halo enables internal investigators to focus their attention on and prioritise reported disclosures.

If you would like to find out more information about the Deloitte Whistleblower Service, Deloitte Halo, and how we can help your organisation please contact us.

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