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AUSTRALIA EXPANDS WHISTLEBLOWER PROTECTIONS

*By Mercer's Paul Shallue, Fiona Webster and Stephanie Rosseau
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Australian employers face expanded whistleblowing protection requirements and increased penalties for noncompliance, under a new [law](#) (Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018). Public companies, large proprietary companies and corporate trustees of registrable superannuation entities must have a whistleblowing policy by 1 Jan 2020, and the new law will apply to protected disclosures made from the act's effective date of July 2019. Victimization and compensation arrangements will apply to victimization occurring at any time from July 2019, even if it relates to eligible disclosures made before July 2019.

Federal elections are scheduled later in 2019, and the Labor Party has announced that it will revise the new law if elected.

KEY PROVISIONS

Highlights of the law, which will affect most businesses, include the following:

- Protected whistleblower disclosures can be made by employees and former employees; contractors, suppliers and their employees; an individual who is an associate of the entity (as defined by the Corporations Act) and spouses or family relatives of any of the above categories. Disclosures can be made anonymously.
- The law expands the range of conduct that can be reported and what will be protected. Workplace grievances generally aren't protected, but some exceptions include the victimization of whistleblowers who make protected disclosures.
- The policies must set out how whistleblowers are protected; to whom and how disclosures must be made; the organization's support for whistleblowers, including protection from retaliation; the procedures for handling investigations; the arrangements for ensuring the fair treatment of employees mentioned in disclosures; and the measures for disseminating the policy to the company's officers and employees.
- Persons eligible to receive protected disclosures include the company's officers, senior managers, the company's actuary or auditor, or any other person nominated by the employer to receive disclosures. Protected disclosures can't be made to direct managers and supervisors.
- Whistleblowers can report matters of public interest directly to a regulatory authority — for example, the Australian Securities and Investment Commission (ASIC) or the Australian Prudential Regulation

Authority. If after 90 days the whistleblower believes no action has been taken to address the matter, he or she can disclose it to a member of parliament or a journalist, subject to fulfilling certain criteria. The 90-day waiting period doesn't apply in cases concerning emergency disclosures endangering health and safety or the environment.

- Increased penalties will apply to employers for violations, which include disclosure of a whistleblower's identity and acts of retaliation. Violators can be fined as much as AUD \$10.5 million, or three times the value of the benefit gained from the conduct or 10% of the company's annual turnover up to a maximum of AUD \$525 million. Organizations that don't have a whistleblowing policy could be fined up to AUD \$126,000, although ASIC could exempt certain types of organizations from this requirement.

RELATED RESOURCES

- [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Bill 2018](#) (Parliament of Australia, 12 Mar 2019)

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