

NEW LEGISLATIVE CHANGES - WHAT YOU NEED TO KNOW

Whistleblowing Protection in Australia

In response to long-running campaigns and public pressure, the Australian Government has amended the Corporations Act 2001 to significantly increase the protections available to corporate whistleblowers. This now provides for criminal offences and civil penalties for a person causing, or threatening, detriment to a whistleblower or breaching a whistleblower's confidentiality, including during an investigation into the whistleblower's concerns.

Who is impacted?

Public companies, large proprietary companies, and corporate trustees of superannuation funds are required to have a compliant Whistleblower Policy in place from 1 January 2020.

It is critical that companies understand their obligations and begin the task of implementing compliant Whistleblower Protection policies and procedures, or amending those currently in place. The penalties for getting it wrong could be severe.

In this short guide, we outline what's changed, key dates and the steps you can take to implement a fully compliant whistleblowing protection program at your organisation.

The law has changed

The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 has significantly broadened the scope of legislative protection for whistleblowers.

1 July 2019

The key provisions that take effect from 1 July 2019 include:

- Expanding the definition of 'eligible whistleblowers' to include:
 - Relatives, dependants or spouses of employees.
 - Suppliers or their employees, and relatives, dependants or spouses of suppliers, or employees of suppliers.
- Replacing the current requirement for whistleblowers to act in 'good faith' (motivation is now irrelevant) with 'reasonable grounds to suspect misconduct, or an improper state of affairs or circumstances'.
- Allowing anonymous disclosures.
- Allowing disclosures to be made to a solicitor in certain circumstances.
- Allowing for 'public interest' or 'emergency' disclosures to be made to journalists or Members of Parliament in certain circumstances.
- Increasing the potential penalties for individuals and corporations if a whistleblower's identity is revealed without consent or a whistleblower suffers, or is threatened with, victimisation.

1 January 2020

From 1 January 2020 all public companies and large proprietary companies must have a whistleblower policy in place that includes information about:

- The protections available to whistleblowers.
- To whom eligible disclosures may be made, and how they may be made.
- How the company will support whistleblowers and protect them from detriment.
- How the company will investigate eligible disclosures.
- How the company will ensure fair treatment of employees who are mentioned in disclosures or to whom a disclosure relates; and
- How the policy is to be made available to officers and employees of the company.

Whistleblower Protection Program: YOUR IMPLEMENTATION OPTIONS



When implementing a Whistleblower Protection Policy, consider what is most practical for your organisation to ensure legal compliance and how it can be tailored to your unique context. Below we list those key elements that must be considered when planning and executing a Whistleblower Protection Program:

PLAN

Design program to facilitate disclosures

- **What dedicated mechanisms will be offered to receive disclosures?**
 - Telephone 'hotline', email, website submission form, physically by post (e.g. a dedicated post office box).
- **Will the dedicated mechanisms offered be insourced or outsourced?**
 - If insourced, who will be accountable to receive and manage disclosures received via the whistleblower mechanisms?
 - If outsourced, how will disclosures be communicated to the company while protecting the identity of the whistleblower?

Set policy and processes

- **Policy considerations:**
 - How will the Policy be expanded to include parties other than employees and suppliers, as required under the Act?
 - How will the company define a 'senior manager'?
- **Process considerations:**
 - How will the company manage disclosures received outside any dedicated whistleblower mechanisms?
 - How will the welfare of whistleblowers and those the subject of a disclosure be managed, and by whom?
 - How will the company 'triage' disclosures to confirm those that qualify for protections, and those that can be managed by an alternative process?
 - How will investigations be managed to ensure confidentiality and the protection of the identify of whistleblowers?

EXECUTE

Training and launching

- **How will training be developed and rolled out?**
Particularly in relation to:
 - Officers, senior managers and auditors as potential recipients of disclosures; and
 - Employees who may undertake a welfare role for either whistleblowers or those subject of a disclosure.
- **How will awareness be developed and communicated?**
Particularly in relation to:
 - Employees and suppliers as potential whistleblowers.
- **Program launched prior to 1 January 2020.**

FTI Consulting can help you design and implement an appropriate Whistleblowing Protection Policy for your organisation. Contact our team to find out more.

How we can help

FTI Consulting is a global advisory firm experienced in assisting companies to identify and manage reputational and other risks in global supply chains. Our teams are staffed by experienced investigators who have an in-depth knowledge of the local communities in which they operate. Our experts can help businesses understand the reputational and practical implication of new modern slavery reporting obligations on its business operations, reputation and in its relationships with stakeholders. FTI Consulting, Inc., including its subsidiaries and affiliates, is a consulting firm and is not a certified public accounting firm or a law firm.

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