The Parliament of the Commonwealth of Australia

THE SENATE

Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017

(Government)

(1) Clause 2, page 2 (table item 2), omit the table item, substitute:

2. Schedule 1, Parts 1, 2 and 3

The first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.

3. Schedule 1, Part 4

The later of:

(a) immediately after the commencement of the provisions covered by table item 2; and

(b) immediately after the commencement of Schedule 1 to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2018.

However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

[commencement; penalties]

(2) Schedule 1, item 2, page 4 (line 1), before “emergency disclosure”, insert “public interest disclosure and”.

[public interest and emergency disclosures]

(3) Schedule 1, item 2, page 7 (line 9), after “an officer”, insert “or senior manager”.

[eligible recipients]

(4) Schedule 1, item 2, page 7 (lines 14 to 17), omit all the words from and including “Part;” to the end of subsection 1317AAC(1), substitute “Part.”.

[eligible recipients]

(5) Schedule 1, item 2, page 8 (line 5) to page 9 (line 3), omit section 1317AAD, substitute:
1317AAD Public interest disclosure and emergency disclosure

(1) A disclosure of information (the public interest disclosure) by an individual (the discloser) qualifies for protection under this Part if:

(a) the discloser has previously made a disclosure of that information (the previous disclosure) that qualifies for protection under this Part under subsection 1317AA(1); and

(b) at least 90 days have passed since the previous disclosure was made; and

(c) the discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related; and

(d) the discloser has reasonable grounds to believe that making a further disclosure of the information in accordance with this subsection would be in the public interest; and

(e) after the end of the period referred to in paragraph (b), the discloser gave the body to which the previous disclosure was made a written notification that:
   (i) includes sufficient information to identify the previous disclosure; and
   (ii) states that the discloser intends to make a public interest disclosure; and

(f) the public interest disclosure is made to:
   (i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
   (ii) a journalist; and

(g) the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient referred to in paragraph (f) of the misconduct or the improper state of affairs or circumstances referred to in subsection 1317AA(4) or the conduct referred to in subsection 1317AA(5), as the case may be.

(2) A disclosure of information (the emergency disclosure) by an individual (the discloser) qualifies for protection under this Part if:

(a) the discloser has previously made a disclosure of that information (the previous disclosure) that qualifies for protection under this Part under subsection 1317AA(1); and

(b) the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and

(c) the discloser gives the body to which the previous disclosure was made a written notification that:
   (i) includes sufficient information to identify the previous disclosure; and
   (ii) states that the discloser intends to make an emergency disclosure; and

(d) the emergency disclosure is made to:
   (i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
   (ii) a journalist; and

(e) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient referred to in paragraph (d) of the substantial and imminent danger.

(3) In this section:

journalist means a person who is working in a professional capacity as a journalist for any of the following:
(a) a newspaper or magazine;
(b) a radio or television broadcasting service;
(c) an electronic service (including a service provided through the internet) that:
   (i) is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the Broadcasting Services Act 1992); and
   (ii) is similar to a newspaper, magazine or radio or television broadcast.

[public interest and emergency disclosures]

(6) Schedule 1, item 2, page 9 (after line 3), after section 1317AAD, insert:

### 1317AAD A Personal work-related grievances

(1) Subsections 1317AA(1) and (2) do not apply to a disclosure of information by an individual (the discloser) to the extent that the information disclosed:

(a) concerns a personal work-related grievance of the discloser; and

(b) does not concern a contravention, or an alleged contravention, of section 1317AC that involves detriment caused to the discloser or a threat made to the discloser.

Note: A disclosure concerning a personal work-related grievance that is made to a legal practitioner may qualify for protection under this Part under subsection 1317AA(3).

(2) For the purposes of subsection (1), the information disclosed concerns a personal work-related grievance of the discloser if:

(a) the information concerns a grievance about any matter in relation to the discloser’s employment, or former employment, having (or tending to have) implications for the discloser personally; and

(b) the information:
   (i) does not have significant implications for the regulated entity to which it relates, or another regulated entity, that do not relate to the discloser; and
   (ii) does not concern conduct, or alleged conduct, referred to in paragraph 1317AADA(5)(c), (d), (e) or (f).

Examples of grievances that may be personal work-related grievances under paragraph (a) (but subject to paragraph (b)) are as follows:

(a) an interpersonal conflict between the discloser and another employee;
(b) a decision relating to the engagement, transfer or promotion of the discloser;
(c) a decision relating to the terms and conditions of engagement of the discloser;
(d) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

[personal work-related grievances]

(7) Schedule 1, item 8, page 11 (line 26) to page 12 (line 10), to be opposed.

[meaning of detriment]

(8) Schedule 1, item 9, page 12 (line 17), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(9) Schedule 1, item 9, page 12 (lines 19 and 20), omit “(within the meaning of section 1317AC)”.

[meaning of detriment]
(10) Schedule 1, item 9, page 12 (line 24), omit “victimising conduct”, substitute “detrimental conduct”.

(11) Schedule 1, item 9, page 12 (line 30), omit “victimising conduct”, substitute “detrimental conduct”.

(12) Schedule 1, item 9, page 13 (line 2), omit “victimising conduct”, substitute “detrimental conduct”.

(13) Schedule 1, item 9, page 13 (lines 5 and 6), omit “victimising conduct”, substitute “detrimental conduct”.

(14) Schedule 1, item 9, page 13 (line 8), omit “victimising conduct”, substitute “detrimental conduct”.

(15) Schedule 1, item 9, page 13 (line 11), omit “victimising conduct”, substitute “detrimental conduct”.

(16) Schedule 1, item 9, page 13 (line 12), omit “victimising conduct”, substitute “detrimental conduct”.

(17) Schedule 1, item 9, page 13 (after line 12), after subsection 1317AD(2), insert:

(2A) A court may make an order under section 1317AE in relation to a person (the first person) that is a body corporate if:

(a) another person (the third person) engages in conduct (detrimental conduct) that:

(i) causes any detriment to a person (the second person) other than the first person or the third person; or

(ii) constitutes the making of a threat to cause any such detriment to a person (the second person) other than the first person or the third person; and

(b) when the third person engages in the detrimental conduct, the third person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct; and

(d) the first person is under a duty to prevent the third person engaging in the detrimental conduct, or a duty to take reasonable steps to ensure that the third person does not engage in the detrimental conduct; and

(e) the first person fails in part or whole to fulfil that duty.

Burden of proof

(2B) In proceedings where a person seeks an order under section 1317AE in relation to another person:
(a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:

(i) if subsection (1) of this section applies—paragraph (1)(a); or
(ii) if subsection (2) of this section applies—paragraph (1)(a), as mentioned in paragraph (2)(b); or
(iii) if subsection (2A) of this section applies—paragraphs (2A)(a) and (d); and
(b) if that onus is discharged—the other person bears the onus of proving that the claim is not made out.

[civil remedies]

(18) Schedule 1, item 9, page 13 (after line 19), after section 1317AD, insert:

1317ADA Detriment

In sections 1317AC and 1317AD, detriment includes (without limitation) any of the following:

(a) dismissal of an employee;
(b) injury of an employee in his or her employment;
(c) alteration of an employee’s position or duties to his or her disadvantage;
(d) discrimination between an employee and other employees of the same employer;
(e) harassment or intimidation of a person;
(f) harm or injury to a person, including psychological harm;
(g) damage to a person’s property;
(h) damage to a person’s reputation;
(i) damage to a person’s business or financial position;
(j) any other damage to a person.

[meaning of detriment]

(19) Schedule 1, item 9, page 13 (line 22), omit “subsections 1317AD(1) and (2)”, substitute “subsections 1317AD(1), (2) and (2A)”.

[civil remedies]

(20) Schedule 1, item 9, page 13 (line 26), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(21) Schedule 1, item 9, page 13 (line 28), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(22) Schedule 1, item 9, page 13 (line 32), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(23) Schedule 1, item 9, page 14 (line 2), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(24) Schedule 1, item 9, page 14 (line 6), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]
(25) Schedule 1, item 9, page 14 (lines 9 and 10), omit “victimising conduct”, substitute “detrimental conduct”.

(26) Schedule 1, item 9, page 14 (line 13), omit “victimising conduct”, substitute “detrimental conduct”.

(27) Schedule 1, item 9, page 14 (lines 15 and 16), omit “victimising conduct”, substitute “detrimental conduct”.

(28) Schedule 1, item 9, page 14 (line 18), omit “victimising conduct”, substitute “detrimental conduct”.

(29) Schedule 1, item 9, page 14 (lines 27 to 37), omit subsection 1317AE(2), substitute:

(2) If the detrimental conduct wholly or partly consists, or consisted, of terminating or purporting to terminate a person’s employment (including detrimental conduct that forces or forced the person to resign), the court must, in making an order mentioned in paragraph (1)(a) or (b), consider the period, if any, the person is likely to be without employment as a result of the detrimental conduct. This subsection does not limit any other matter the court may consider.

(30) Schedule 1, item 9, page 15 (lines 1 to 4), omit subsection 1317AE(3), substitute:

(3) In deciding whether to make an order under paragraph (1)(b) in relation to the first person’s employer, the court may have regard to the following:

(a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;

(b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) (whether or not section 1317AI requires the employer to have such a policy)—the extent to which the employer gave effect to that policy;

(c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.

(31) Schedule 1, item 9, page 17 (lines 22 and 23), omit “(within the meaning of section 1317AC)”.

(32) Schedule 1, item 9, page 18 (after line 7), after section 1317AJ, insert:

1317AK Review of operation of whistleblower protections

(1) The Minister must cause a review to be undertaken of the operation of:

(a) this Part; and

(b) Part IVD of the Taxation Administration Act 1953.
Part IVD of the *Taxation Administration Act 1953* provides for protections for whistleblowers in relation to tax.

(2) The review must be conducted as soon as practicable after the end of 5 years after this section commences.

(3) The Minister must cause a written report about the review to be prepared.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

[review of operation of whistleblower protections]

(33) Schedule 1, item 12, page 19 (lines 27 to 29), omit subsection 1644(3), substitute:

(3) Subsections 1317AI(1) to (4), as inserted by item 9 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2018*, apply on and after the day 6 months after the day that item commences.

[application of whistleblower policy requirement]

(34) Schedule 1, item 15, page 27 (lines 6 to 20), omit subsection 14ZZY(5).

[meaning of detriment]

(35) Schedule 1, item 15, page 27 (line 25), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(36) Schedule 1, item 15, page 27 (lines 27 and 28), omit “(within the meaning of section 14ZZY)”.

[meaning of detriment]

(37) Schedule 1, item 15, page 27 (line 32), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(38) Schedule 1, item 15, page 28 (line 4), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(39) Schedule 1, item 15, page 28 (line 11), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(40) Schedule 1, item 15, page 28 (lines 14 and 15), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(41) Schedule 1, item 15, page 28 (line 17), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(42) Schedule 1, item 15, page 28 (line 20), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]
(43) Schedule 1, item 15, page 28 (line 21), omit “victimising conduct”, substitute “detrimental conduct”.

(44) Schedule 1, item 15, page 28 (after line 21), after subsection 14ZZZ(2), insert:

(2A) A court may make an order under section 14ZZZA in relation to a person (the **first person**) that is a body corporate if:

(a) another person (the **third person**) engages in conduct (**detrimental conduct**) that:

(i) causes any detriment to a person (the **second person**) other than the first person or the third person; or

(ii) constitutes the making of a threat to cause any such detriment to a person (the **second person**) other than the first person or the third person; and

(b) when the third person engages in the detrimental conduct, the third person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct; and

(d) the first person is under a duty to prevent the third person engaging in the detrimental conduct, or a duty to take reasonable steps to ensure that the third person does not engage in the detrimental conduct; and

(e) the first person fails in part or whole to fulfil that duty.

**Burden of proof**

(2B) In proceedings where a person seeks an order under section 14ZZZA in relation to another person:

(a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:

(i) if subsection (1) of this section applies—paragraph (1)(a); or

(ii) if subsection (2) of this section applies—paragraph (1)(a), as mentioned in paragraph (2)(b); or

(iii) if subsection (2A) of this section applies—paragraphs (2A)(a) and (d); and

(b) if that onus is discharged—the other person bears the onus of proving that the claim is not made out.

(45) Schedule 1, item 15, page 28 (after line 28), after section 14ZZZ, insert:

**14ZZZAA Detriment**

In sections 14ZZY and 14ZZZ, **detriment** includes (without limitation) any of the following:

(a) dismissal of an employee;

(b) injury of an employee in his or her employment;

(c) alteration of an employee’s position or duties to his or her disadvantage;

(d) discrimination between an employee and other employees of the same employer;

(e) harassment or intimidation of a person;

(f) harm or injury to a person, including psychological harm;
(g) damage to a person’s property;
(h) damage to a person’s reputation;
(i) damage to a person’s business or financial position;
(j) any other damage to a person.

[meaning of detriment]

(46) Schedule 1, item 15, page 28 (line 31), omit “subsections 14ZZZ(1) and (2)”, substitute “subsections 14ZZZ(1), (2) and (2A)”.

[civil remedies]

(47) Schedule 1, item 15, page 29 (line 3), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(48) Schedule 1, item 15, page 29 (line 5), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(49) Schedule 1, item 15, page 29 (line 9), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(50) Schedule 1, item 15, page 29 (line 13), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(51) Schedule 1, item 15, page 29 (line 17), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(52) Schedule 1, item 15, page 29 (lines 20 and 21), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(53) Schedule 1, item 15, page 29 (line 24), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(54) Schedule 1, item 15, page 29 (lines 26 and 27), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(55) Schedule 1, item 15, page 29 (line 29), omit “victimising conduct”, substitute “detrimental conduct”.

[detrimental conduct]

(56) Schedule 1, item 15, page 30 (lines 1 to 11), omit subsection 14ZZZA(2), substitute:

(2) If the detrimental conduct wholly or partly consists, or consisted, of terminating or purporting to terminate a person’s employment (including detrimental conduct that forces or forced the person to resign), the court must, in making an order mentioned in
paragraph (1)(a) or (b), consider the period, if any, the person is likely to be without employment as a result of the detrimental conduct. This subsection does not limit any other matter the court may consider.

[civil remedies]

(57) Schedule 1, item 15, page 30 (lines 12 to 15), omit subsection 14ZZZA(3), substitute:

3 In deciding whether to make an order under paragraph (1)(b) in relation to the first person’s employer, the court may have regard to the following:

(a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;

(b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) of the Corporations Act 2001 (whether or not section 1317AI of that Act requires the employer to have such a policy)—the extent to which the employer gave effect to that policy;

(c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.

[compensation orders relating to employers]

(58) Schedule 1, page 35 (after line 28), at the end of the Schedule, add:

Part 4—Contingent amendments

Corporations Act 2001

33 In the appropriate position in subsection 1317E(3)

Insert:

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Item Description</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1317AAE(1)</td>
<td>breach of confidentiality of identity of whistleblower</td>
<td>uncategorised</td>
</tr>
<tr>
<td>1317AC(1), (2) and (3)</td>
<td>victimisation or threatened victimisation of whistleblower</td>
<td>uncategorised</td>
</tr>
</tbody>
</table>

34 At the end of Part 10.32

Add:

1644A Application of amendments relating to penalties

The amendments made by Part 4 of Schedule 1 to the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2018 apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of that Part.

35 Schedule 3 (table items dealing with subsections 1317AC(1), (2) and (3) and subsection 1317AE(1))

Repeal the items, substitute:
Subsection 1317AAE(1) 6 months imprisonment
Subsections 1317AC(1), (2) and (3) 2 years imprisonment
Subsections 1317AI(1), (2) and (3) 60 penalty units

Taxation Administration Act 1953

36 **Subsection 14ZZW(1) (penalty)**
Omit “30 penalty units”, substitute “60 penalty units”.

37 **Subsections 14ZZY(1) and (2) (penalties)**
Omit “120 penalty units”, substitute “240 penalty units”.

38 **Application of amendments**
The amendments of the *Taxation Administration Act 1953* made by this Part apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of this Part.