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The Parliament of the
Commonwealth of Australia

THE SENATE

As passed by both Houses

**Treasury Laws Amendment (Enhancing
Whistleblower Protections) Bill 2018**

No. , 2018

**A Bill for an Act to amend the law in relation to
whistleblowing, and for related purposes**

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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 <i>Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2018</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1 **Schedule 1—Amendments**

2 **Part 1—Amendment of the Corporations Act 2001**

3 *Corporations Act 2001*

4 **1 Section 9**

5 Insert:

6 *eligible recipient* has the meaning given by section 1317AAC.

7 *eligible whistleblower* has the meaning given by
8 section 1317AAA.

9 *regulated entity* has the meaning given by section 1317AAB.

10 *State or Territory authority* means an authority or other body
11 (whether incorporated or not) that is established or continued in
12 existence by or under a law of a State or Territory.

13 **2 Section 1317AA**

14 Repeal the section, substitute:

15 **1317AA Disclosures qualifying for protection under this Part**

16 *Disclosure to ASIC, APRA or prescribed body*

- 17 (1) A disclosure of information by an individual (the *discloser*)
18 qualifies for protection under this Part if:
- 19 (a) the discloser is an eligible whistleblower in relation to a
20 regulated entity; and
 - 21 (b) the disclosure is made to any of the following:
 - 22 (i) ASIC;
 - 23 (ii) APRA;
 - 24 (iii) a Commonwealth authority prescribed for the purposes
25 of this subparagraph in relation to the regulated entity;
26 and
 - 27 (c) subsection (4) or (5) applies to the disclosure.

- 1 (c) constitutes an offence against, or a contravention of, a
2 provision of any of the following:
3 (i) this Act;
4 (ii) the ASIC Act;
5 (iii) the *Banking Act 1959*;
6 (iv) the *Financial Sector (Collection of Data) Act 2001*;
7 (v) the *Insurance Act 1973*;
8 (vi) the *Life Insurance Act 1995*;
9 (vii) the *National Consumer Credit Protection Act 2009*;
10 (viii) the *Superannuation Industry (Supervision) Act 1993*;
11 (ix) an instrument made under an Act referred to in any of
12 subparagraphs (i) to (viii); or
13 (d) constitutes an offence against any other law of the
14 Commonwealth that is punishable by imprisonment for a
15 period of 12 months or more; or
16 (e) represents a danger to the public or the financial system; or
17 (f) is prescribed by the regulations for the purposes of this
18 paragraph.

19 Note: There is no requirement for a discloser to identify himself or herself in
20 order for a disclosure to qualify for protection under this Part.

21 **1317AAA Eligible whistleblowers**

22 An individual is an *eligible whistleblower* in relation to a regulated
23 entity if the individual is, or has been, any of the following:

- 24 (a) an officer of the regulated entity;
25 (b) an employee of the regulated entity;
26 (c) an individual who supplies services or goods to the regulated
27 entity (whether paid or unpaid);
28 (d) an employee of a person that supplies services or goods to the
29 regulated entity (whether paid or unpaid);
30 (e) an individual who is an associate of the regulated entity;
31 (f) for a regulated entity that is a superannuation entity:
32 (i) an individual who is a trustee (within the meaning of the
33 *Superannuation Industry (Supervision) Act 1993*),
34 custodian (within the meaning of that Act) or

- 1 investment manager (within the meaning of that Act) of
2 the superannuation entity; or
3 (ii) an officer of a body corporate that is a trustee, custodian
4 or investment manager of the superannuation entity; or
5 (iii) an employee of an individual referred to in
6 subparagraph (i) or a body corporate referred to in
7 subparagraph (ii); or
8 (iv) an individual who supplies services or goods to an
9 individual referred to in subparagraph (i) or a body
10 corporate referred to in subparagraph (ii) (whether paid
11 or unpaid); or
12 (v) an employee of a person that supplies services or goods
13 to an individual referred to in subparagraph (i) or a body
14 corporate referred to in subparagraph (ii) (whether paid
15 or unpaid);
16 (g) a relative of an individual referred to in any of paragraphs (a)
17 to (f);
18 (h) a dependant of an individual referred to in any of
19 paragraphs (a) to (f), or of such an individual's spouse;
20 (i) an individual prescribed by the regulations for the purposes
21 of this paragraph in relation to the regulated entity.

22 **1317AAB Regulated entities**

23 Each of the following is a *regulated entity*:

- 24 (a) a company;
25 (b) a corporation to which paragraph 51(xx) of the Constitution
26 applies;
27 (c) an ADI (within the meaning of the *Banking Act 1959*), an
28 authorised NOHC (within the meaning of that Act) or a
29 subsidiary of an ADI or an authorised NOHC;
30 (d) a general insurer (within the meaning of the *Insurance Act*
31 *1973*), an authorised NOHC (within the meaning of that Act)
32 or a subsidiary of a general insurer or an authorised NOHC;
33 (e) a life company (within the meaning of the *Life Insurance Act*
34 *1995*), a registered NOHC (within the meaning of that Act)
35 or a subsidiary of a life company or a registered NOHC;

- 1 (f) a superannuation entity or a trustee (within the meaning of
2 the *Superannuation Industry (Supervision) Act 1993*) of a
3 superannuation entity;
4 (g) an entity prescribed by the regulations for the purposes of
5 this paragraph.

6 **1317AAC Eligible recipients**

- 7 (1) Each of the following is an *eligible recipient* in relation to a
8 regulated entity that is a body corporate:
9 (a) an officer or senior manager of the body corporate or a
10 related body corporate;
11 (b) an auditor, or a member of an audit team conducting an audit,
12 of the body corporate or a related body corporate;
13 (c) an actuary of the body corporate or a related body corporate;
14 (d) a person authorised by the body corporate to receive
15 disclosures that may qualify for protection under this Part.
- 16 (2) Each of the following is an *eligible recipient* in relation to a
17 regulated entity that is a superannuation entity:
18 (a) an officer of the superannuation entity;
19 (b) an auditor, or a member of an audit team conducting an audit,
20 of the superannuation entity;
21 (c) an actuary of the superannuation entity;
22 (d) an individual who is a trustee (within the meaning of the
23 *Superannuation Industry (Supervision) Act 1993*) of the
24 superannuation entity;
25 (e) a director of a body corporate that is the trustee (within the
26 meaning of the *Superannuation Industry (Supervision) Act*
27 *1993*) of the superannuation entity;
28 (f) a person authorised by the trustee or trustees (within the
29 meaning of the *Superannuation Industry (Supervision) Act*
30 *1993*) of the superannuation entity to receive disclosures that
31 may qualify for protection under this Part.
- 32 (3) The regulations may prescribe persons or bodies that are *eligible*
33 *recipients* in relation to all regulated entities, or in relation to a
34 class or classes of regulated entities.
- 35 (4) Subsections (1), (2) and (3) do not limit each other.
-

1 **1317AAD Public interest disclosure and emergency disclosure**

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

- 4 (a) the discloser has previously made a disclosure of that
5 information (the *previous disclosure*) that qualifies for
6 protection under this Part under subsection 1317AA(1); and
7 (b) at least 90 days have passed since the previous disclosure
8 was made; and
9 (c) the discloser does not have reasonable grounds to believe that
10 action is being, or has been, taken to address the matters to
11 which the previous disclosure related; and
12 (d) the discloser has reasonable grounds to believe that making a
13 further disclosure of the information in accordance with this
14 subsection would be in the public interest; and
15 (e) after the end of the period referred to in paragraph (b), the
16 discloser gave the body to which the previous disclosure was
17 made a written notification that:
18 (i) includes sufficient information to identify the previous
19 disclosure; and
20 (ii) states that the discloser intends to make a public interest
21 disclosure; and
22 (f) the public interest disclosure is made to:
23 (i) a member of the Parliament of the Commonwealth, the
24 Parliament of a State or the legislature of a Territory; or
25 (ii) a journalist; and
26 (g) the extent of the information disclosed in the public interest
27 disclosure is no greater than is necessary to inform the
28 recipient referred to in paragraph (f) of the misconduct or the
29 improper state of affairs or circumstances referred to in
30 subsection 1317AA(4) or the conduct referred to in
31 subsection 1317AA(5), as the case may be.

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

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

- 1 (b) the discloser has reasonable grounds to believe that the
2 information concerns a substantial and imminent danger to
3 the health or safety of one or more persons or to the natural
4 environment; and
5 (c) the discloser gives the body to which the previous disclosure
6 was made a written notification that:
7 (i) includes sufficient information to identify the previous
8 disclosure; and
9 (ii) states that the discloser intends to make an emergency
10 disclosure; and
11 (d) the emergency disclosure is made to:
12 (i) a member of the Parliament of the Commonwealth, the
13 Parliament of a State or the legislature of a Territory; or
14 (ii) a journalist; and
15 (e) the extent of the information disclosed in the emergency
16 disclosure is no greater than is necessary to inform the
17 recipient referred to in paragraph (d) of the substantial and
18 imminent danger.

19 (3) In this section:

- 20 **journalist** means a person who is working in a professional
21 capacity as a journalist for any of the following:
22 (a) a newspaper or magazine;
23 (b) a radio or television broadcasting service;
24 (c) an electronic service (including a service provided through
25 the internet) that:
26 (i) is operated on a commercial basis, or operated by a
27 body that provides a national broadcasting service
28 (within the meaning of the *Broadcasting Services Act*
29 *1992*); and
30 (ii) is similar to a newspaper, magazine or radio or
31 television broadcast.

32 **1317AADA Personal work-related grievances**

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

- 1 (a) concerns a personal work-related grievance of the discloser;
2 and
3 (b) does not concern a contravention, or an alleged
4 contravention, of section 1317AC that involves detriment
5 caused to the discloser or a threat made to the discloser.

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

- 9 (2) For the purposes of subsection (1), the information disclosed
10 concerns a **personal work-related grievance** of the discloser if:
11 (a) the information concerns a grievance about any matter in
12 relation to the discloser's employment, or former
13 employment, having (or tending to have) implications for the
14 discloser personally; and
15 (b) the information:
16 (i) does not have significant implications for the regulated
17 entity to which it relates, or another regulated entity,
18 that do not relate to the discloser; and
19 (ii) does not concern conduct, or alleged conduct, referred
20 to in paragraph 1317AA(5)(c), (d), (e) or (f).

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

- 23 (a) an interpersonal conflict between the discloser and another
24 employee;
25 (b) a decision relating to the engagement, transfer or promotion of
26 the discloser;
27 (c) a decision relating to the terms and conditions of engagement of
28 the discloser;
29 (d) a decision to suspend or terminate the engagement of the
30 discloser, or otherwise to discipline the discloser.

31 **1317AAE Confidentiality of whistleblower's identity**

- 32 (1) A person (the **first person**) contravenes this subsection if:
33 (a) another person (the **discloser**) makes a disclosure of
34 information (the **qualifying disclosure**) that qualifies for
35 protection under this Part; and
36 (b) the first person discloses any of the following (the
37 **confidential information**):
38 (i) the identity of the discloser;
-

- 1 (ii) information that is likely to lead to the identification of
2 the discloser; and
3 (c) the confidential information is information that the first
4 person obtained directly or indirectly because of the
5 qualifying disclosure; and
6 (d) the disclosure referred to in paragraph (b) is not authorised
7 under subsection (2) or (3).

8 Note 1: Failure to comply with this subsection is an offence (see
9 subsection 1311(1)).

10 Note 2: This subsection is also a civil penalty provision (see section 1317E).
11 For relief from liability to a civil penalty relating to this subsection,
12 see section 1317S.

- 13 (2) A disclosure referred to in paragraph (1)(b) is authorised under this
14 subsection if it:
15 (a) is made to ASIC; or
16 (b) is made to APRA; or
17 (c) is made to a member of the Australian Federal Police (within
18 the meaning of the *Australian Federal Police Act 1979*); or
19 (d) is made to a legal practitioner for the purpose of obtaining
20 legal advice or legal representation in relation to the
21 operation of this Part; or
22 (e) is made to a person or body prescribed by the regulations for
23 the purposes of this paragraph; or
24 (f) is made with the consent of the discloser.
- 25 (3) Without limiting subsection (2), a disclosure referred to in
26 paragraph (1)(b) is authorised under this subsection if it:
27 (a) is made by ASIC, APRA or a member of the Australian
28 Federal Police (within the meaning of the *Australian Federal*
29 *Police Act 1979*); and
30 (b) is made to a Commonwealth authority, or a State or Territory
31 authority, for the purpose of assisting the authority in the
32 performance of its functions or duties.
- 33 (4) Subsection (1) does not apply if:
34 (a) the disclosure referred to in paragraph (1)(b):
35 (i) is not of the identity of the discloser; and

- 1 (ii) is reasonably necessary for the purposes of investigating
2 a matter referred to in subsection 1317AA(4) or (5) to
3 which the qualifying disclosure relates; and
4 (b) the first person takes all reasonable steps to reduce the risk
5 that the discloser will be identified as a result of the
6 disclosure referred to in paragraph (1)(b).

7 Note: In a prosecution for an offence, a defendant bears an evidential burden
8 in relation to the matter in subsection (4): see subsection 13.3(3) of the
9 *Criminal Code*.

10 **3 Subsection 1317AB(1)**

11 Repeal the subsection, substitute:

- 12 (1) If a person makes a disclosure that qualifies for protection under
13 this Part:
14 (a) the person is not subject to any civil, criminal or
15 administrative liability (including disciplinary action) for
16 making the disclosure; and
17 (b) no contractual or other remedy may be enforced, and no
18 contractual or other right may be exercised, against the
19 person on the basis of the disclosure; and
20 (c) if the disclosure qualifies for protection under this Part under
21 subsection 1317AA(1) or section 1317AAD—the
22 information is not admissible in evidence against the person
23 in criminal proceedings or in proceedings for the imposition
24 of a penalty, other than proceedings in respect of the falsity
25 of the information.

26 Note: Except as provided for by paragraph (c), this subsection does not
27 prevent the person being subject to any civil, criminal or
28 administrative liability for conduct of the person that is revealed by
29 the disclosure.

30 **4 Subsection 1317AB(3)**

31 Repeal the subsection.

32 **5 Paragraphs 1317AC(1)(c) and (d)**

33 Repeal the paragraphs, substitute:

- 34 (c) when the first person engages in the conduct, the first person
35 believes or suspects that the second person or any other

1 person made, may have made, proposes to make or could
2 make a disclosure that qualifies for protection under this Part;
3 and

4 (d) the belief or suspicion referred to in paragraph (c) is the
5 reason, or part of the reason, for the conduct.

6 **6 At the end of subsections 1317AC(1), (2) and (3)**

7 Add:

8 Note 1: Failure to comply with this subsection is an offence (see
9 subsection 1311(1)).

10 Note 2: This subsection is also a civil penalty provision (see section 1317E).
11 For relief from liability to a civil penalty relating to this subsection,
12 see section 1317S.

13 **7 Subsection 1317AC(5)**

14 After “subsection (2)”, insert “or proceedings in relation to a
15 contravention of subsection (2)”.

16 **9 Sections 1317AD and 1317AE**

17 Repeal the sections, substitute:

18 **1317AD Compensation and other remedies—circumstances in which** 19 **an order may be made**

- 20 (1) A court may make an order under section 1317AE in relation to a
21 person (the *first person*) if:
- 22 (a) the first person engages in conduct (*detrimental conduct*)
23 that:
 - 24 (i) causes any detriment to another person (the *second*
25 *person*); or
 - 26 (ii) constitutes the making of a threat to cause any such
27 detriment to another person (the *second person*); and
 - 28 (b) when the first person engages in the detrimental conduct, the
29 first person believes or suspects that the second person or any
30 other person made, may have made, proposes to make or
31 could make a disclosure that qualifies for protection under
32 this Part; and
 - 33 (c) the belief or suspicion referred to in paragraph (b) is the
34 reason, or part of the reason, for the detrimental conduct.
-

- 1 (2) A court may make an order under section 1317AE in relation to a
2 person (the **first person**) if:
- 3 (a) the first person is or was an officer or employee of a body
4 corporate; and
- 5 (b) paragraphs (1)(a), (b) and (c) of this section apply to the body
6 corporate because of detrimental conduct engaged in by the
7 body corporate; and
- 8 (c) the first person:
- 9 (i) aided, abetted, counselled or procured the detrimental
10 conduct; or
- 11 (ii) induced, whether by threats or promises or otherwise,
12 the detrimental conduct; or
- 13 (iii) was in any way, by act or omission, directly or
14 indirectly, knowingly concerned in, or party to, the
15 detrimental conduct; or
- 16 (iv) conspired with others to effect the detrimental conduct.
- 17 (2A) A court may make an order under section 1317AE in relation to a
18 person (the **first person**) that is a body corporate if:
- 19 (a) another person (the **third person**) engages in conduct
20 (**detrimental conduct**) that:
- 21 (i) causes any detriment to a person (the **second person**)
22 other than the first person or the third person; or
- 23 (ii) constitutes the making of a threat to cause any such
24 detriment to a person (the **second person**) other than the
25 first person or the third person; and
- 26 (b) when the third person engages in the detrimental conduct, the
27 third person believes or suspects that the second person or
28 any other person made, may have made, proposes to make or
29 could make a disclosure that qualifies for protection under
30 this Part; and
- 31 (c) the belief or suspicion referred to in paragraph (b) is the
32 reason, or part of the reason, for the detrimental conduct; and
- 33 (d) the first person is under a duty to prevent the third person
34 engaging in the detrimental conduct, or a duty to take
35 reasonable steps to ensure that the third person does not
36 engage in the detrimental conduct; and
- 37 (e) the first person fails in part or whole to fulfil that duty.
-

1 *Burden of proof*

- 2 (2B) In proceedings where a person seeks an order under
3 section 1317AE in relation to another person:
- 4 (a) the person seeking the order bears the onus of adducing or
5 pointing to evidence that suggests a reasonable possibility of
6 the matters in:
 - 7 (i) if subsection (1) of this section applies—
8 paragraph (1)(a); or
 - 9 (ii) if subsection (2) of this section applies—
10 paragraph (1)(a), as mentioned in paragraph (2)(b); or
 - 11 (iii) if subsection (2A) of this section applies—
12 paragraphs (2A)(a) and (d); and
 - 13 (b) if that onus is discharged—the other person bears the onus of
14 proving that the claim is not made out.

15 *Threats*

- 16 (3) For the purposes of this section, a threat may be:
- 17 (a) express or implied; or
 - 18 (b) conditional or unconditional.
- 19 (4) In proceedings for the purposes of section 1317AE, it is not
20 necessary to prove that the person threatened actually feared that
21 the threat would be carried out.

22 **1317ADA Detriment**

- 23 In sections 1317AC and 1317AD, *detriment* includes (without
24 limitation) any of the following:
- 25 (a) dismissal of an employee;
 - 26 (b) injury of an employee in his or her employment;
 - 27 (c) alteration of an employee's position or duties to his or her
28 disadvantage;
 - 29 (d) discrimination between an employee and other employees of
30 the same employer;
 - 31 (e) harassment or intimidation of a person;
 - 32 (f) harm or injury to a person, including psychological harm;
 - 33 (g) damage to a person's property;

- 1 (h) damage to a person's reputation;
- 2 (i) damage to a person's business or financial position;
- 3 (j) any other damage to a person.

4 **1317AE Compensation and other remedies—orders that may be**
5 **made**

- 6 (1) For the purposes of subsections 1317AD(1), (2) and (2A), a court
7 may make any of the following orders:
 - 8 (a) an order requiring the first person to compensate the second
9 person, or any other person, for loss, damage or injury
10 suffered as a result of the detrimental conduct;
 - 11 (b) if the court is satisfied that the first person engaged in the
12 detrimental conduct in connection with the first person's
13 position as an employee:
 - 14 (i) an order requiring the first person to compensate the
15 second person, or any other person, for a part of loss,
16 damage or injury as a result of the detrimental conduct,
17 and an order requiring the first person's employer to
18 compensate the second person, or any other person, for
19 a part of loss, damage or injury as a result of the
20 detrimental conduct; or
 - 21 (ii) an order requiring the first person and the first person's
22 employer jointly to compensate the second person, or
23 any other person, for loss, damage or injury suffered as
24 a result of the detrimental conduct; or
 - 25 (iii) an order requiring the first person's employer to
26 compensate the second person, or any other person, for
27 loss, damage or injury as a result of the detrimental
28 conduct;
 - 29 (c) an order granting an injunction, on such terms as the court
30 thinks appropriate, to prevent, stop or remedy the effects of
31 the detrimental conduct;
 - 32 (d) an order requiring the first person to apologise to the second
33 person, or any other person, for engaging in the detrimental
34 conduct;
 - 35 (e) if the second person is or was employed in a particular
36 position and the detrimental conduct wholly or partly
37 consists, or consisted, of the termination, or purported

- 1 termination, of the second person’s employment—an order
2 that the second person be reinstated in that position or a
3 position at a comparable level;
- 4 (f) if the court thinks it is appropriate—an order requiring the
5 first person to pay exemplary damages to the second person,
6 or any other person;
- 7 (g) any other order the court thinks appropriate.
- 8 (2) If the detrimental conduct wholly or partly consists, or consisted,
9 of terminating or purporting to terminate a person’s employment
10 (including detrimental conduct that forces or forced the person to
11 resign), the court must, in making an order mentioned in
12 paragraph (1)(a) or (b), consider the period, if any, the person is
13 likely to be without employment as a result of the detrimental
14 conduct. This subsection does not limit any other matter the court
15 may consider.
- 16 (3) In deciding whether to make an order under paragraph (1)(b) in
17 relation to the first person’s employer, the court may have regard to
18 the following:
- 19 (a) whether the employer took reasonable precautions, and
20 exercised due diligence, to avoid the detrimental conduct;
- 21 (b) if the employer has a policy dealing with any or all of the
22 matters referred to in subsection 1317AI(5) (whether or not
23 section 1317AI requires the employer to have such a
24 policy)—the extent to which the employer gave effect to that
25 policy;
- 26 (c) any duty that the employer was under to prevent the
27 detrimental conduct, or to take reasonable steps to ensure that
28 the detrimental conduct was not engaged in.
- 29 (4) If the court makes an order under subparagraph (1)(b)(ii), the first
30 person and the first person’s employer are jointly and severally
31 liable to pay the compensation concerned.

32 **1317AF Interaction between civil proceedings, civil penalties and**
33 **criminal offences**

34 To avoid doubt, a person may bring civil proceedings for an order
35 under section 1317AE, or civil proceedings for a contravention of
36 subsection 1317AC(1), (2) or (3), in relation to particular conduct,

1 even if a prosecution for a criminal offence against
2 section 1317AC in relation to that conduct has not been brought, or
3 cannot be brought.

4 **1317AG Identifying information not to be disclosed etc. to courts or**
5 **tribunals**

6 If a person (the *discloser*) makes a disclosure of information that
7 qualifies for protection under this Part, the discloser or any other
8 person is not to be required:

- 9 (a) to disclose to a court or tribunal:
- 10 (i) the identity of the discloser; or
 - 11 (ii) information that is likely to lead to the identification of
12 the discloser; or
- 13 (b) to produce to a court or tribunal a document containing:
- 14 (i) the identity of the discloser; or
 - 15 (ii) information that is likely to lead to the identification of
16 the discloser;

17 except where:

- 18 (c) it is necessary to do so for the purposes of giving effect to
19 this Part; or
- 20 (d) the court or tribunal thinks it necessary in the interests of
21 justice to do so.

22 Note: A discloser may also be able to apply to the court or tribunal, in
23 accordance with the rules of the court or tribunal, for an order
24 protecting the discloser's identity.

25 **1317AH Costs only if proceedings instituted vexatiously etc.**

- 26 (1) This section applies to a proceeding (including an appeal) in a
27 court in relation to a matter arising under section 1317AE in which
28 a person (the *claimant*) is seeking an order under
29 subsection 1317AE(1).
- 30 (2) The claimant must not be ordered by the court to pay costs incurred
31 by another party to the proceedings, except in accordance with
32 subsection (3) of this section.
- 33 (3) The claimant may be ordered to pay the costs only if:

- 1 (a) the court is satisfied that the claimant instituted the
2 proceedings vexatiously or without reasonable cause; or
3 (b) the court is satisfied that the claimant's unreasonable act or
4 omission caused the other party to incur the costs.

5 **1317AI Whistleblower policies**

- 6 (1) A public company must:
7 (a) have a policy that sets out the matters referred to in
8 subsection (5); and
9 (b) make that policy available to officers and employees of the
10 company.

11 Note: Failure to comply with this subsection is an offence: see
12 subsection 1311(1).

- 13 (2) A proprietary company that has been a large proprietary company
14 for any financial year (the *first financial year*) must, on each day
15 in each later financial year that is at least 6 months after the last
16 day of the first financial year:
17 (a) have a policy that sets out the matters referred to in
18 subsection (5); and
19 (b) make that policy available to officers and employees of the
20 company.

21 Note: Failure to comply with this subsection is an offence: see
22 subsection 1311(1).

- 23 (3) Without limiting subsection (2), a proprietary company that is the
24 trustee (within the meaning of the *Superannuation Industry*
25 *(Supervision) Act 1993*) of a registrable superannuation entity
26 (within the meaning of that Act) must:
27 (a) have a policy that sets out the matters referred to in
28 subsection (5); and
29 (b) make that policy available to officers and employees of the
30 company.

31 Note: Failure to comply with this subsection is an offence: see
32 subsection 1311(1).

- 33 (4) An offence based on subsection (1), (2) or (3) is an offence of strict
34 liability.

35 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 1 (5) The matters that a policy must set out for the purposes of
2 paragraph (1)(a), (2)(a) or (3)(a) are:
3 (a) information about the protections available to
4 whistleblowers, including protections under this Part; and
5 (b) information about to whom disclosures that qualify for
6 protection under this Part may be made, and how they may
7 be made; and
8 (c) information about how the company will support
9 whistleblowers and protect them from detriment; and
10 (d) information about how the company will investigate
11 disclosures that qualify for protection under this Part; and
12 (e) information about how the company will ensure fair
13 treatment of employees of the company who are mentioned
14 in disclosures that qualify for protection under this Part, or to
15 whom such disclosures relate; and
16 (f) information about how the policy is to be made available to
17 officers and employees of the company; and
18 (g) any matters prescribed by the regulations for the purposes of
19 this paragraph.

20 **1317AJ Exemption orders—class orders for companies**

- 21 (1) ASIC may, by legislative instrument, make an order in respect of a
22 specified class of company relieving companies in the class from
23 all or specified requirements of section 1317AI.
24 (2) The order may:
25 (a) be expressed to be subject to conditions; and
26 (b) be indefinite or limited to a specified period.

27 **1317AK Review of operation of whistleblower protections**

- 28 (1) The Minister must cause a review to be undertaken of the operation
29 of:
30 (a) this Part; and
31 (b) Part IVD of the *Taxation Administration Act 1953*.

32 Note: Part IVD of the *Taxation Administration Act 1953* provides for
33 protections for whistleblowers in relation to tax.

- 1 (2) The review must be conducted as soon as practicable after the end
2 of 5 years after this section commences.
- 3 (3) The Minister must cause a written report about the review to be
4 prepared.
- 5 (4) The Minister must cause a copy of the report to be laid before each
6 House of the Parliament within 15 sitting days of that House after
7 the Minister receives the report.

8 **10 Subsection 1317E(1) (after table item 45)**

9 Insert:

10 45A	subsection 1317AAE(1)	breach of confidentiality of identity of whistleblower
45B	subsections 1317AC(1), (2) and (3)	victimisation or threatened victimisation of whistleblower

11

12 **11 After subsection 1317G(1G)**

13 Insert:

14 *Whistleblower provisions*

- 15 (1H) A Court may order a person to pay the Commonwealth a pecuniary
16 penalty if:
- 17 (a) a declaration of contravention by the person has been made
18 under section 1317E; and
- 19 (b) the contravention is of subsection 1317AAE(1)
20 (confidentiality of whistleblower's identity) or
21 subsection 1317AC(1), (2) or (3) (victimisation or threatened
22 victimisation of whistleblower).
- 23 (1J) The maximum amount that the court may order the person to pay
24 for contravening subsection 1317AAE(1) or 1317AC(1), (2) or (3)
25 is:
- 26 (a) \$200,000 for an individual; or
27 (b) \$1 million for a body corporate.

1 **12 In the appropriate position in Chapter 10**

2 Insert:

3 **Part 10.32—Transitional provisions relating to the**
4 **Treasury Laws Amendment (Enhancing**
5 **Whistleblower Protections) Act 2018**
6

7 **1644 Application of amendments**

8 (1) The amendments made by Part 1 of Schedule 1 to the *Treasury*
9 *Laws Amendment (Enhancing Whistleblower Protections) Act 2018*
10 apply in relation to disclosures that:

11 (a) are made at or after the time that Part commences (the
12 *commencement time*); and

13 (b) relate to matters that occur or occurred before, at or after the
14 commencement time.

15 (2) Without limiting subsection (1), sections 1317AC, 1317AD and
16 1317AE, and any other provision of Part 9.4AAA to the extent that
17 it relates to those sections, as in force immediately after the
18 commencement time, also apply at and after the commencement
19 time in relation to a disclosure that:

20 (a) was made before the commencement time; and

21 (b) would be a disclosure protected by Part 9.4AAA, if the
22 amendments made by Part 1 of Schedule 1 to the *Treasury*
23 *Laws Amendment (Enhancing Whistleblower Protections)*
24 *Act 2018* had been in force at the time the disclosure was
25 made.

26 *Whistleblower policies*

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

1 (4) A reference to a financial year in subsection 1317AI(2), as inserted
2 by that item, is a reference to a financial year that ends on or after
3 30 June 2018.

4 **13 Schedule 3 (table items 338 and 338A)**

5 Repeal the items, substitute:

6

337A	Subsection 1317AAE(1)	30 penalty units or imprisonment for 6 months, or both.
338	Subsection 1317AC(1), (2) or (3)	120 penalty units or imprisonment for 2 years, or both.
338A	Subsection 1317AI(1), (2) or (3)	60 penalty units.

7

1 **Part 2—Amendment of the Taxation Administration**
2 **Act 1953**

3 ***Taxation Administration Act 1953***

4 **14 Subsection 2(1)**

5 Insert:

6 *eligible recipient* has the meaning given by section 14ZZV.

7 *eligible whistleblower* has the meaning given by section 14ZZU.

8 **15 After Part IVC**

9 Insert:

10 **Part IVD—Protection for whistleblowers**
11

12 **14ZZT Disclosures qualifying for protection under this Part**

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

15 (a) the discloser is an eligible whistleblower in relation to an
16 entity (within the meaning of the *Income Tax Assessment Act*
17 *1997*); and

18 (b) the disclosure is made to the Commissioner; and

19 (c) the discloser considers that the information may assist the
20 Commissioner to perform his or her functions or duties under
21 a taxation law in relation to the entity or an associate (within
22 the meaning of section 318 of the *Income Tax Assessment Act*
23 *1936*) of the entity.

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

26 (a) the discloser is an eligible whistleblower in relation to an
27 entity (within the meaning of the *Income Tax Assessment Act*
28 *1997*); and

- 1 (b) the disclosure is made to an eligible recipient in relation to
2 the entity; and
3 (c) the discloser has reasonable grounds to suspect that the
4 information indicates misconduct, or an improper state of
5 affairs or circumstances, in relation to the tax affairs of the
6 entity or an associate (within the meaning of section 318 of
7 the *Income Tax Assessment Act 1936*) of the entity; and
8 (d) the discloser considers that the information may assist the
9 eligible recipient to perform functions or duties in relation to
10 the tax affairs of the entity or an associate (within the
11 meaning of section 318 of the *Income Tax Assessment Act*
12 *1936*) of the entity.

13 (3) A disclosure of information by an individual qualifies for
14 protection under this Part if the disclosure is made to a legal
15 practitioner for the purpose of obtaining legal advice or legal
16 representation in relation to the operation of this Part.

17 (4) In this section:

18 *tax affairs* means affairs relating to any tax imposed by or under,
19 or assessed or collected under, a law administered by the
20 Commissioner.

21 Note: There is no requirement for a discloser to identify himself or herself in
22 order for a disclosure to qualify for protection under this Part.

23 **14ZZU Eligible whistleblowers**

24 An individual is an *eligible whistleblower* in relation to an entity
25 (within the meaning of the *Income Tax Assessment Act 1997*) if the
26 individual is, or has been, any of the following:

- 27 (a) an officer (within the meaning of the *Corporations Act 2001*)
28 of the entity;
29 (b) an employee of the entity;
30 (c) an individual who supplies services or goods to the entity
31 (whether paid or unpaid);
32 (d) an employee of a person that supplies services or goods to the
33 entity (whether paid or unpaid);

- 1 (e) an individual who is an associate (within the meaning of
2 section 318 of the *Income Tax Assessment Act 1936*) of the
3 entity;
4 (f) a spouse or child of an individual referred to in any of
5 paragraphs (a) to (e);
6 (g) a dependant of an individual referred to in any of
7 paragraphs (a) to (e), or of such an individual's spouse;
8 (h) an individual prescribed by the regulations for the purposes
9 of this paragraph in relation to the entity.

10 **14ZZV Eligible recipients**

- 11 (1) Each of the following is an ***eligible recipient*** in relation to an entity
12 (within the meaning of the *Income Tax Assessment Act 1997*):
13 (a) an auditor, or a member of an audit team conducting an audit,
14 of the entity;
15 (b) a registered tax agent or BAS agent (within the meaning of
16 the *Tax Agent Services Act 2009*) who provides tax agent
17 services (within the meaning of that Act) or BAS services
18 (within the meaning of that Act) to the entity;
19 (c) a person authorised by the entity to receive disclosures that
20 may qualify for protection under this Part;
21 (d) a person or body prescribed for the purposes of this
22 paragraph in relation to the entity.
- 23 (2) If the entity is a body corporate, each of the following is an ***eligible***
24 ***recipient*** in relation to the entity:
25 (a) a director, secretary or senior manager (within the meaning
26 of the *Corporations Act 2001*) of the body corporate;
27 (b) any other employee or officer (within the meaning of the
28 *Corporations Act 2001*) of the body corporate who has
29 functions or duties that relate to the tax affairs (within the
30 meaning of section 14ZZT) of the body corporate.
- 31 (3) If the entity is a trust, each of the following is an ***eligible recipient***
32 in relation to the entity:
33 (a) a trustee of the trust;
34 (b) a person authorised by a trustee of the trust to receive
35 disclosures that may qualify for protection under this Part.

- 1 (4) If the entity is a partnership, each of the following is an *eligible*
2 *recipient* in relation to the entity:
3 (a) a partner in the partnership;
4 (b) a person authorised by a partner in the partnership to receive
5 disclosures that may qualify for protection under this Part.
- 6 (5) Subsections (1), (2), (3) and (4) do not limit each other.

7 **14ZZW Confidentiality of whistleblower's identity**

- 8 (1) A person (the *first person*) commits an offence if:
9 (a) another person (the *discloser*) makes a disclosure of
10 information (the *qualifying disclosure*) that qualifies for
11 protection under this Part; and
12 (b) the first person discloses any of the following (the
13 *confidential information*):
14 (i) the identity of the discloser;
15 (ii) information that is likely to lead to the identification of
16 the discloser; and
17 (c) the confidential information is information that the first
18 person obtained directly or indirectly because of the
19 qualifying disclosure; and
20 (d) the disclosure referred to in paragraph (b) is not authorised
21 under subsection (2).

22 Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- 23 (2) A disclosure referred to in paragraph (1)(b) is authorised under this
24 subsection if it:
25 (a) is made to the Commissioner; or
26 (b) is made to a member of the Australian Federal Police (within
27 the meaning of the *Australian Federal Police Act 1979*); or
28 (c) is made to a legal practitioner for the purpose of obtaining
29 legal advice or legal representation in relation to the
30 operation of this Part; or
31 (d) is made to a person or body prescribed by the regulations for
32 the purposes of this paragraph; or
33 (e) is made with the consent of the discloser.
- 34 (3) Subsection (1) does not apply if:

- 1 (a) the disclosure referred to in paragraph (1)(b):
2 (i) is not of the identity of the discloser; and
3 (ii) is reasonably necessary for the purposes of investigating
4 misconduct, or an improper state of affairs or
5 circumstances, to which the qualifying disclosure
6 relates; and
7 (b) the first person takes all reasonable steps to reduce the risk
8 that the discloser will be identified as a result of the
9 disclosure referred to in paragraph (1)(b).

10 Note: A defendant bears an evidential burden in relation to the matter in
11 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

12 **14ZZX Disclosure that qualifies for protection not actionable etc.**

- 13 (1) If a person makes a disclosure that qualifies for protection under
14 this Part:
15 (a) the person is not subject to any civil, criminal or
16 administrative liability (including disciplinary action) for
17 making the disclosure; and
18 (b) no contractual or other remedy may be enforced, and no
19 contractual or other right may be exercised, against the
20 person on the basis of the disclosure; and
21 (c) if the disclosure was a disclosure of information to the
22 Commissioner—the information is not admissible in
23 evidence against the person in criminal proceedings or in
24 proceedings for the imposition of a penalty, other than
25 proceedings in respect of the falsity of the information.

26 Note: Except as provided for by paragraph (c), this subsection does not
27 prevent the person being subject to any civil, criminal or
28 administrative liability for conduct of the person that is revealed by
29 the disclosure.

- 30 (2) Without limiting subsection (1):
31 (a) the person has qualified privilege in respect of the disclosure;
32 and
33 (b) a contract to which the person is a party may not be
34 terminated on the basis that the disclosure constitutes a
35 breach of the contract.

1 **14ZZY Victimisation prohibited**

2 *Actually causing detriment to another person*

- 3 (1) A person (the **first person**) commits an offence if:
- 4 (a) the first person engages in conduct; and
- 5 (b) the first person's conduct causes any detriment to another
- 6 person (the **second person**); and
- 7 (c) when the first person engages in the conduct, the first person
- 8 believes or suspects that the second person or any other
- 9 person made, may have made, proposes to make or could
- 10 make a disclosure that qualifies for protection under this Part;
- 11 and
- 12 (d) the belief or suspicion referred to in paragraph (c) is the
- 13 reason, or part of the reason, for the conduct.

14 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

15 *Threatening to cause detriment to another person*

- 16 (2) A person (the **first person**) commits an offence if:
- 17 (a) the first person makes to another person (the **second person**)
- 18 a threat to cause any detriment to the second person or to a
- 19 third person; and
- 20 (b) the first person:
- 21 (i) intends the second person to fear that the threat will be
- 22 carried out; or
- 23 (ii) is reckless as to causing the second person to fear that
- 24 the threat will be carried out; and
- 25 (c) the first person makes the threat because a person:
- 26 (i) makes a disclosure that qualifies for protection under
- 27 this Part; or
- 28 (ii) may make a disclosure that would qualify for protection
- 29 under this Part.

30 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

31 *Threats*

- 32 (3) For the purposes of subsection (2), a threat may be:

- 1 (a) express or implied; or
2 (b) conditional or unconditional.

- 3 (4) In a prosecution for an offence against subsection (2), it is not
4 necessary to prove that the person threatened actually feared that
5 the threat would be carried out.

6 **14ZZZ Compensation and other remedies—circumstances in which**
7 **an order may be made**

- 8 (1) A court may make an order under section 14ZZZA in relation to a
9 person (the *first person*) if:
10 (a) the first person engages in conduct (*detrimental conduct*)
11 that:
12 (i) causes any detriment to another person (the *second*
13 *person*); or
14 (ii) constitutes the making of a threat to cause any such
15 detriment to another person (the *second person*); and
16 (b) when the first person engages in the detrimental conduct, the
17 first person believes or suspects that the second person or any
18 other person made, may have made, proposes to make or
19 could make a disclosure that qualifies for protection under
20 this Part; and
21 (c) the belief or suspicion referred to in paragraph (b) is the
22 reason, or part of the reason, for the detrimental conduct.
- 23 (2) A court may make an order under section 14ZZZA in relation to a
24 person (the *first person*) if:
25 (a) the first person is or was an officer (within the meaning of
26 the *Corporations Act 2001*) or employee of a body corporate;
27 and
28 (b) paragraphs (1)(a), (b) and (c) of this section apply to the body
29 corporate because of detrimental conduct engaged in by the
30 body corporate; and
31 (c) the first person:
32 (i) aided, abetted, counselled or procured the detrimental
33 conduct; or
34 (ii) induced, whether by threats or promises or otherwise,
35 the detrimental conduct; or
-

- 1 (iii) was in any way, by act or omission, directly or
2 indirectly, knowingly concerned in, or party to, the
3 detrimental conduct; or
4 (iv) conspired with others to effect the detrimental conduct.
- 5 (2A) A court may make an order under section 14ZZZA in relation to a
6 person (the **first person**) that is a body corporate if:
- 7 (a) another person (the **third person**) engages in conduct
8 (**detrimental conduct**) that:
- 9 (i) causes any detriment to a person (the **second person**)
10 other than the first person or the third person; or
11 (ii) constitutes the making of a threat to cause any such
12 detriment to a person (the **second person**) other than the
13 first person or the third person; and
- 14 (b) when the third person engages in the detrimental conduct, the
15 third person believes or suspects that the second person or
16 any other person made, may have made, proposes to make or
17 could make a disclosure that qualifies for protection under
18 this Part; and
- 19 (c) the belief or suspicion referred to in paragraph (b) is the
20 reason, or part of the reason, for the detrimental conduct; and
- 21 (d) the first person is under a duty to prevent the third person
22 engaging in the detrimental conduct, or a duty to take
23 reasonable steps to ensure that the third person does not
24 engage in the detrimental conduct; and
- 25 (e) the first person fails in part or whole to fulfil that duty.

26 *Burden of proof*

- 27 (2B) In proceedings where a person seeks an order under
28 section 14ZZZA in relation to another person:
- 29 (a) the person seeking the order bears the onus of adducing or
30 pointing to evidence that suggests a reasonable possibility of
31 the matters in:
- 32 (i) if subsection (1) of this section applies—
33 paragraph (1)(a); or
34 (ii) if subsection (2) of this section applies—
35 paragraph (1)(a), as mentioned in paragraph (2)(b); or

- 1 (iii) if subsection (2A) of this section applies—
2 paragraphs (2A)(a) and (d); and
3 (b) if that onus is discharged—the other person bears the onus of
4 proving that the claim is not made out.

5 *Threats*

- 6 (3) For the purposes of this section, a threat may be:
7 (a) express or implied; or
8 (b) conditional or unconditional.
- 9 (4) In proceedings for the purposes of section 14ZZZA, it is not
10 necessary to prove that the person threatened actually feared that
11 the threat would be carried out.

12 **14ZZZAA Detriment**

- 13 In sections 14ZZZY and 14ZZZZ, *detriment* includes (without
14 limitation) any of the following:
15 (a) dismissal of an employee;
16 (b) injury of an employee in his or her employment;
17 (c) alteration of an employee's position or duties to his or her
18 disadvantage;
19 (d) discrimination between an employee and other employees of
20 the same employer;
21 (e) harassment or intimidation of a person;
22 (f) harm or injury to a person, including psychological harm;
23 (g) damage to a person's property;
24 (h) damage to a person's reputation;
25 (i) damage to a person's business or financial position;
26 (j) any other damage to a person.

27 **14ZZZA Compensation and other remedies—orders that may be**
28 **made**

- 29 (1) For the purposes of subsections 14ZZZZ(1), (2) and (2A), a court
30 may make any of the following orders:

- 1 (a) an order requiring the first person to compensate the second
2 person, or any other person, for loss, damage or injury
3 suffered as a result of the detrimental conduct;
- 4 (b) if the court is satisfied that the first person engaged in the
5 detrimental conduct in connection with the first person's
6 position as an employee:
- 7 (i) an order requiring the first person to compensate the
8 second person, or any other person, for a part of loss,
9 damage or injury as a result of the detrimental conduct,
10 and an order requiring the first person's employer to
11 compensate the second person, or any other person, for
12 a part of loss, damage or injury as a result of the
13 detrimental conduct; or
- 14 (ii) an order requiring the first person and the first person's
15 employer jointly to compensate the second person, or
16 any other person, for loss, damage or injury suffered as
17 a result of the detrimental conduct; or
- 18 (iii) an order requiring the first person's employer to
19 compensate the second person, or any other person, for
20 loss, damage or injury as a result of the detrimental
21 conduct;
- 22 (c) an order granting an injunction, on such terms as the court
23 thinks appropriate, to prevent, stop or remedy the effects of
24 the detrimental conduct;
- 25 (d) an order requiring the first person to apologise to the second
26 person, or any other person, for engaging in the detrimental
27 conduct;
- 28 (e) if the second person is or was employed in a particular
29 position and the detrimental conduct wholly or partly
30 consists, or consisted, of the termination, or purported
31 termination, of the second person's employment—an order
32 that the second person be reinstated in that position or a
33 position at a comparable level;
- 34 (f) if the court thinks it is appropriate—an order requiring the
35 first person to pay exemplary damages to the second person,
36 or any other person;
- 37 (g) any other order the court thinks appropriate.

- 1 (2) If the detrimental conduct wholly or partly consists, or consisted,
2 of terminating or purporting to terminate a person's employment
3 (including detrimental conduct that forces or forced the person to
4 resign), the court must, in making an order mentioned in
5 paragraph (1)(a) or (b), consider the period, if any, the person is
6 likely to be without employment as a result of the detrimental
7 conduct. This subsection does not limit any other matter the court
8 may consider.
- 9 (3) In deciding whether to make an order under paragraph (1)(b) in
10 relation to the first person's employer, the court may have regard to
11 the following:
- 12 (a) whether the employer took reasonable precautions, and
13 exercised due diligence, to avoid the detrimental conduct;
 - 14 (b) if the employer has a policy dealing with any or all of the
15 matters referred to in subsection 1317AI(5) of the
16 *Corporations Act 2001* (whether or not section 1317AI of
17 that Act requires the employer to have such a policy)—the
18 extent to which the employer gave effect to that policy;
 - 19 (c) any duty that the employer was under to prevent the
20 detrimental conduct, or to take reasonable steps to ensure that
21 the detrimental conduct was not engaged in.
- 22 (4) If the court makes an order under subparagraph (1)(b)(ii), the first
23 person and the first person's employer are jointly and severally
24 liable to pay the compensation concerned.

25 **14ZZZB Identifying information not to be disclosed etc. to courts or**
26 **tribunals**

- 27 If a person (the *discloser*) makes a disclosure of information that
28 qualifies for protection under this Part, the discloser or any other
29 person is not to be required:
- 30 (a) to disclose to a court or tribunal:
 - 31 (i) the identity of the discloser; or
 - 32 (ii) information that is likely to lead to the identification of
33 the discloser; or
 - 34 (b) to produce to a court or tribunal a document containing:
 - 35 (i) the identity of the discloser; or

- 1 (ii) information that is likely to lead to the identification of
2 the discloser;
3 except where:
4 (c) it is necessary to do so for the purposes of giving effect to
5 this Part; or
6 (d) the court or tribunal thinks it necessary in the interests of
7 justice to do so.
8 Note: A discloser may also be able to apply to the court or tribunal, in
9 accordance with the rules of the court or tribunal, for an order
10 protecting the discloser's identity.

11 **14ZZZC Costs only if proceedings instituted vexatiously etc.**

- 12 (1) This section applies to a proceeding (including an appeal) in a
13 court in relation to a matter arising under section 14ZZZA in which
14 a person (the *claimant*) is seeking an order under
15 subsection 14ZZZA(1).
16 (2) The claimant must not be ordered by the court to pay costs incurred
17 by another party to the proceedings, except in accordance with
18 subsection (3) of this section.
19 (3) The claimant may be ordered to pay the costs only if:
20 (a) the court is satisfied that the claimant instituted the
21 proceedings vexatiously or without reasonable cause; or
22 (b) the court is satisfied that the claimant's unreasonable act or
23 omission caused the other party to incur the costs.

24 **14ZZZD Interaction between civil proceedings and criminal**
25 **offences**

26 To avoid doubt, a person may bring civil proceedings under
27 section 14ZZZA in relation to conduct even if a prosecution for a
28 criminal offence against section 14ZZY in relation to the conduct
29 has not been brought, or cannot be brought.

30 **14ZZZE Compensation for acquisition of property**

- 31 (1) If the operation of this Part would result in an acquisition of
32 property (within the meaning of paragraph 51(xxxi) of the
33 Constitution) from a person otherwise than on just terms (within
-

1 **Part 3—Other amendments**

2 ***Banking Act 1959***

3 **17 Part VIA (after the heading)**

4 Insert:

5 Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

6 **18 Division 1 of Part VIA**

7 Repeal the Division.

8 **19 Division 2 of Part VIA (heading)**

9 Repeal the heading.

10 **20 Application**

11 Despite the repeal of Division 1 of Part VIA of the *Banking Act 1959* by
12 item 18, that Division continues to apply, at and after the
13 commencement of this item, in relation to:

14 (a) disclosures of information made before that commencement;
15 and

16 (b) conduct referred to in subsection 52C(1) of the *Banking Act*
17 *1959*, as in force immediately before that commencement,
18 that is engaged in before that commencement; and

19 (c) a threat referred to in subsection 52C(2) of the *Banking Act*
20 *1959*, as in force immediately before that commencement,
21 that is made before that commencement.

22 ***Insurance Act 1973***

23 **21 Division 4 of Part IIIA (after the heading)**

24 Insert:

25 Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

26 **22 Subdivision A of Division 4 of Part IIIA**

27 Repeal the Subdivision.

1 **23 Subdivision B of Division 4 of Part IIIA (heading)**

2 Repeal the heading.

3 **24 Application**

4 Despite the repeal of Subdivision A of Division 4 of Part IIIA of the
5 *Insurance Act 1973* by item 22, that Subdivision continues to apply, at
6 and after the commencement of this item, in relation to:

7 (a) disclosures of information made before that commencement;
8 and

9 (b) conduct referred to in subsection 38C(1) of the *Insurance Act*
10 *1973*, as in force immediately before that commencement,
11 that is engaged in before that commencement; and

12 (c) a threat referred to in subsection 38C(2) of the *Insurance Act*
13 *1973*, as in force immediately before that commencement,
14 that is made before that commencement.

15 ***Life Insurance Act 1995***

16 **25 Division 5 of Part 7 (after the heading)**

17 Insert:

18 Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

19 **26 Subdivision A of Division 5 of Part 7**

20 Repeal the Subdivision.

21 **27 Subdivision B of Division 5 of Part 7 (heading)**

22 Repeal the heading.

23 **28 Application**

24 Despite the repeal of Subdivision A of Division 5 of Part 7 of the *Life*
25 *Insurance Act 1995* by item 26, that Subdivision continues to apply, at
26 and after the commencement of this item, in relation to:

27 (a) disclosures of information made before that commencement;
28 and

29 (b) conduct referred to in subsection 156C(1) of the *Life*
30 *Insurance Act 1995*, as in force immediately before that

- 1 commencement, that is engaged in before that
2 commencement; and
3 (c) a threat referred to in subsection 156C(2) of the *Life*
4 *Insurance Act 1995*, as in force immediately before that
5 commencement, in relation to such disclosures, that is made
6 before that commencement.

7 ***Superannuation Industry (Supervision) Act 1993***

8 **29 Part 29A (after the heading)**

9 Insert:

10 Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

11 **30 Division 1 of Part 29A**

12 Repeal the Division.

13 **31 Division 2 of Part 29A (heading)**

14 Repeal the heading.

15 **32 Application**

16 Despite the repeal of Division 1 of Part 29A of the *Superannuation*
17 *Industry (Supervision) Act 1993* by item 30, that Division continues to
18 apply, at and after the commencement of this item, in relation to:

- 19 (a) disclosures of information made before that commencement;
20 and
21 (b) conduct referred to in subsection 336C(1) of the
22 *Superannuation Industry (Supervision) Act 1993*, as in force
23 immediately before that commencement, that is engaged in
24 before that commencement; and
25 (c) a threat referred to in subsection 336C(2) of the
26 *Superannuation Industry (Supervision) Act 1993*, as in force
27 immediately before that commencement, that is made before
28 that commencement.

1 **Part 4—Contingent amendments**

2 *Corporations Act 2001*

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

4 Insert:

5

Subsection 1317AAE(1)	breach of confidentiality of identity of whistleblower	uncategorised
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Subsections 1317AC(1), (2) and (3)	victimisation or threatened victimisation of whistleblower	uncategorised
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6 **34 At the end of Part 10.32**

7 Add:

8 **1644A Application of amendments relating to penalties**

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

14 **35 Schedule 3 (table items dealing with**
15 **subsections 1317AC(1), (2) and (3) and**
16 **subsection 1317AE(1))**

17 Repeal the items, substitute:

18

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

1 ***Taxation Administration Act 1953***

2 **36 Subsection 14ZZW(1) (penalty)**

3 Omit “30 penalty units”, substitute “60 penalty units”.

4 **37 Subsections 14ZZY(1) and (2) (penalties)**

5 Omit “120 penalty units”, substitute “240 penalty units”.

6 **38 Application of amendments**

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