

# EXPOSURE DRAFT

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
----------------

## **Treasury Laws Amendment (Whistleblowers) Bill 2017**

**No.     , 2017**

*(Treasury)*

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

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

---

## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
<b>Schedule 1—Amendments</b>		<b>3</b>
Part 1—Amendment of the Corporations Act 2001		3
	<i>Corporations Act 2001</i>	3
Part 2—Amendment of the Taxation Administration Act 1953		16
	<i>Taxation Administration Act 1953</i>	16
Part 3—Other amendments		25
	<i>Banking Act 1959</i>	25
	<i>Insurance Act 1973</i>	25
	<i>Life Insurance Act 1995</i>	26
	<i>Superannuation Industry (Supervision) Act 1993</i>	26



# EXPOSURE DRAFT

1  
2 **A Bill for an Act to amend the law in relation to**  
3 **whistleblowing, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Treasury Laws Amendment (Whistleblowers) Act*  
7 *2017*.

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with  
11 column 2 of the table. Any other statement in column 2 has effect  
12 according to its terms.  
13

---

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
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	1 July 2018.	1 July 2018

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

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

# EXPOSURE DRAFT

---

1 **3 Schedules**

2           Legislation that is specified in a Schedule to this Act is amended or  
3           repealed as set out in the applicable items in the Schedule  
4           concerned, and any other item in a Schedule to this Act has effect  
5           according to its terms.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Amendment of the Corporations Act 2001 **Part 1**

---

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 whistleblower* has the meaning given by  
7 section 1317AAD.

8 *whistleblower disclosee* has the meaning given by  
9 section 1317AAB.

10 *whistleblower regulated entity* has the meaning given by  
11 section 1317AAA.

12 *whistleblower third party disclosee* has the meaning given by  
13 section 1317AAC.

14 **2 Section 1317AA**

15 Repeal the section, substitute:

16 **1317AA Disclosures qualifying for protection under this Part**

17 (1) A disclosure of information by a person (the *discloser*) qualifies for  
18 protection under this Part if:

19 (a) the discloser is, or has been, an eligible whistleblower in  
20 relation to a whistleblower regulated entity; and

21 (b) the disclosure is made to:

22 (i) a whistleblower disclosee in relation to the  
23 whistleblower regulated entity; or

24 (ii) a whistleblower third party disclosee in relation to the  
25 information; or

26 (iii) a legal practitioner, for the purpose of obtaining legal  
27 advice or representation; and

28 (c) the disclosure is covered by subsection (2) or (3).

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Amendment of the Corporations Act 2001

---

1

#### *Misconduct or an improper state of affairs or circumstances*

2

- (2) This subsection covers a disclosure of information if the discloser has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to:

3

4

5

6

(a) the whistleblower regulated entity; or

7

(b) if the whistleblower regulated entity is a body corporate—a related body corporate of the whistleblower regulated entity.

8

9

#### *Other disclosable conduct*

10

- (3) Without limiting subsection (2), this subsection covers a disclosure of information if the discloser has reasonable grounds to suspect that the information indicates that any of the following:

11

12

13

(a) the whistleblower regulated entity, or an officer or employee of the whistleblower regulated entity;

14

15

(b) if the whistleblower regulated entity is a body corporate—a related body corporate of the whistleblower regulated entity, or an officer or employee of a related body corporate of the whistleblower regulated entity;

16

17

18

has engaged in conduct that:

19

20

(c) constitutes an offence against, or a contravention of, a provision of any of the following:

21

22

(i) this Act;

23

(ii) the ASIC Act;

24

(iii) the *Banking Act 1959*;

25

(iv) the *Financial Sector (Collection of Data) Act 2001*;

26

(v) the *Insurance Act 1973*;

27

(vi) the *Life Insurance Act 1995*;

28

(vii) the *National Consumer Credit Protection Act 2009*;

29

(viii) the *Superannuation Industry (Supervision) Act 1993*;

30

(ix) an instrument made under an Act referred to in any of subparagraphs (i) to (viii); or

31

32

(d) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or

33

34

35

(e) represents a danger to the public or the financial system; or



# EXPOSURE DRAFT

- 1 (f) is prescribed by the regulations for the purposes of this  
2 paragraph.

## 3 **1317AAA Whistleblower regulated entities**

4 Each of the following is a ***whistleblower regulated entity***:

- 5 (a) a company;  
6 (b) a corporation to which paragraph 51(xx) of the Constitution  
7 applies;  
8 (c) an ADI (within the meaning of the *Banking Act 1959*), an  
9 authorised NOHC (within the meaning of that Act) or a  
10 subsidiary of an ADI or an authorised NOHC;  
11 (d) a general insurer (within the meaning of the *Insurance Act*  
12 *1973*), an authorised NOHC (within the meaning of that Act)  
13 or a subsidiary of a general insurer or an authorised NOHC;  
14 (e) a life company (within the meaning of the *Life Insurance Act*  
15 *1995*), a registered NOHC (within the meaning of that Act)  
16 or a subsidiary of a life company or a registered NOHC;  
17 (f) a superannuation entity or a trustee (within the meaning of  
18 the *Superannuation Industry (Supervision) Act 1993*) of a  
19 superannuation entity.

## 20 **1317AAB Whistleblower disclosees**

- 21 (1) Each of the following is a ***whistleblower disclosee*** in relation to a  
22 whistleblower regulated entity:  
23 (a) ASIC;  
24 (b) APRA;  
25 (c) a member of the Australian Federal Police (within the  
26 meaning of the *Australian Federal Police Act 1979*);  
27 (d) a person or body prescribed for the purposes of this  
28 paragraph in relation to the whistleblower regulated entity.

29 Note: Paragraphs 1317AAC(1)(a) (whistleblower third party disclosees) and  
30 1317AB(1)(c) (protection from self-incrimination etc.) may apply to a  
31 disclosure to a whistleblower disclosee referred to in this subsection.

- 32 (2) Each of the following is a ***whistleblower disclosee*** in relation to a  
33 whistleblower regulated entity that is a body corporate:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Amendment of the Corporations Act 2001

---

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

#### 1317AAC Whistleblower third party disclosees

- 28  
29 (1) This section applies if:  
30 (a) a person (the **discloser**) has previously disclosed information  
31 to a whistleblower disclosee referred to in  
32 subsection 1317AAB(1); and  
33 (b) a reasonable period has passed since that disclosure was  
34 made; and
-

# EXPOSURE DRAFT

- 1 (c) the discloser has reasonable grounds to believe that there is  
2 an imminent risk of serious harm or danger to public health  
3 or safety, or to the financial system, if the information is not  
4 acted on immediately.
- 5 (2) Each of the following is a *whistleblower third party disclosee* in  
6 relation to the information:  
7 (a) a member of the Parliament of the Commonwealth, a State or  
8 a Territory;  
9 (b) a journalist.
- 10 (3) In this section:  
11 *journalist* means a person who is working in a professional  
12 capacity as a journalist.

## 13 **1317AAD Eligible whistleblowers**

- 14 Each of the following individuals is an *eligible whistleblower* in  
15 relation to a whistleblower regulated entity:  
16 (a) an officer of the whistleblower regulated entity;  
17 (b) an employee of the whistleblower regulated entity;  
18 (c) an individual who has a contract for the supply of services or  
19 goods to the whistleblower regulated entity;  
20 (d) an employee of a person who has a contract for the supply of  
21 services or goods to the whistleblower regulated entity;  
22 (e) an individual who is an associate of the whistleblower  
23 regulated entity;  
24 (f) for a whistleblower regulated entity that is a superannuation  
25 entity—an individual who is a trustee (within the meaning of  
26 the *Superannuation Industry (Supervision) Act 1993*),  
27 custodian (within the meaning of that Act) or investment  
28 manager (within the meaning of that Act) of the  
29 superannuation entity;  
30 (g) a spouse or child of an individual referred to in any of  
31 paragraphs (a) to (f);  
32 (h) a dependant of an individual referred to in any of  
33 paragraphs (a) to (f), or of such an individual's spouse;

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Amendment of the Corporations Act 2001

---

- 1 (i) an individual prescribed by the regulations for the purposes  
2 of this paragraph in relation to the whistleblower regulated  
3 entity.

#### 4 **3 After paragraph 1317AB(1)(b)**

5 Insert:

- 6 ; and (c) if the disclosure was a disclosure of information to an eligible  
7 whistleblower disclosee referred to in  
8 subsection 1317AAB(1)—the information is not admissible  
9 in evidence against the person in criminal proceedings or in  
10 proceedings for the imposition of a penalty, other than  
11 proceedings in respect of the falsity of the information.

#### 12 **4 Subsection 1317AB(1) (note)**

13 Repeal the note, substitute:

- 14 Note: Except as provided for by paragraph (c), this subsection does not  
15 prevent the person being subject to any civil or criminal liability for  
16 conduct of the person that is revealed by the disclosure.

#### 17 **5 Paragraphs 1317AC(1)(c) and (d)**

18 Repeal the paragraphs, substitute:

- 19 (c) when the first person engages in the conduct, the first person  
20 believes or suspects that the second person or any other  
21 person made, may have made, proposes to make or could  
22 make a disclosure that qualifies for protection under this Part;  
23 and  
24 (d) the belief or suspicion referred to in paragraph (c) is the  
25 reason, or part of the reason, for the conduct.

#### 26 **6 At the end of section 1317AC**

27 Add:

28 *Detriment*

- 29 (6) In this section, *detriment* includes (without limitation) any of the  
30 following:  
31 (a) dismissal of an employee;  
32 (b) injury of an employee in his or her employment;

# EXPOSURE DRAFT

- 1 (c) alteration of an employee's position to his or her
- 2 disadvantage;
- 3 (d) discrimination between an employee and other employees of
- 4 the same employer;
- 5 (e) harassment or intimidation of a person;
- 6 (f) harm or injury to a person, including psychological harm;
- 7 (g) damage to a person's property;
- 8 (h) damage to a person's reputation;
- 9 (i) damage to a person's business or financial position.

## 10 **7 Sections 1317AD and 1317AE**

11 Repeal the sections, substitute:

### 12 **1317AD Right to compensation**

- 13 (1) This subsection applies to a person (the *first person*) if:
- 14 (a) the first person engages in conduct; and
  - 15 (b) another person (the *victim*) suffers damage because of the
  - 16 conduct; and
  - 17 (c) when the first person engages in the conduct, the first person
  - 18 believes or suspects that the victim or any other person made,
  - 19 may have made, proposes to make or could make a disclosure
  - 20 that qualifies for protection under this Part; and
  - 21 (d) the belief or suspicion referred to in paragraph (c) is the
  - 22 reason, or part of the reason, for the conduct.

23 Note: A threat to cause detriment to another person may be conduct for the

24 purposes of this subsection.

- 25 (2) This subsection applies to a person (the *first person*) if:
- 26 (a) the first person is an officer or employee of a body corporate;
  - 27 and
  - 28 (b) subsection (1) applies to the body corporate because of
  - 29 conduct engaged in by the body corporate and damage
  - 30 suffered by a person (the *victim*); and
  - 31 (c) the first person:
  - 32 (i) has aided, abetted, counselled or procured the conduct
  - 33 or the making of the threat; or

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Amendment of the Corporations Act 2001

---

- 1 (ii) has induced, whether by threats or promises or  
2 otherwise, the conduct or the making of the threat; or  
3 (iii) has been in any way, by act or omission, directly or  
4 indirectly, knowingly concerned in, or party to, the  
5 conduct or the making of the threat; or  
6 (iv) has conspired with others to effect the conduct or the  
7 making of the threat.
- 8 (3) If subsection (1) or (2) applies to a person, the person is liable to  
9 compensate the victim for the damage.
- 10 (4) In any proceeding where a person (the *claimant*) seeks  
11 compensation under this section from another person (the *other*  
12 *person*):  
13 (a) the claimant bears the onus of proving the matters in  
14 paragraphs (1)(a) and (b); and  
15 (b) if the claimant discharges that onus—the other person bears  
16 the onus of proving that the claim is not made out.

#### 17 **1317ADA Name of discloser or victim not to be published by court**

- 18 (1) This section applies to a proceeding (including an appeal) before a  
19 court if the proceeding relates to a person in the person's capacity  
20 as:  
21 (a) a discloser (within the meaning of section 1317AA); or  
22 (b) a victim (within the meaning of section 1317AD).
- 23 (2) The court must not publish (in electronic form or otherwise), in  
24 relation to the proceeding, the person's name.
- 25 (3) The court may order that this section does not apply in relation to a  
26 proceeding or a person if the court thinks it necessary in the  
27 interests of justice to do so.

#### 28 **1317ADB Identifying information not to be disclosed etc. to courts 29 or tribunals**

30 If a person (the *discloser*) makes a disclosure of information that  
31 qualifies for protection under this Part, a person is not to be  
32 required to do any of the following, except where it is necessary to  
33 do so for the purposes of giving effect to this Part:

---

# EXPOSURE DRAFT

- 1 (a) disclose to a court or tribunal:  
2 (i) the identity of the discloser; or  
3 (ii) information that is likely to lead to the identification of  
4 the discloser;  
5 (b) produce to a court or tribunal a document containing:  
6 (i) the identity of the discloser; or  
7 (ii) information that is likely to lead to the identification of  
8 the discloser.

9 **1317ADC Costs only if proceedings instituted vexatiously etc.**

- 10 (1) This section applies to a proceeding (including an appeal) in a  
11 court in relation to a matter arising under section 1317AD.  
12 (2) The victim (within the meaning of that section) must not be  
13 ordered by the court to pay costs incurred by another party to the  
14 proceedings, except in accordance with subsection (3) of this  
15 section.  
16 (3) The victim may be ordered to pay the costs only if:  
17 (a) the court is satisfied that the victim instituted the proceedings  
18 vexatiously or without reasonable cause; or  
19 (b) the court is satisfied that the victim's unreasonable act or  
20 omission caused the other party to incur the costs.

21 **1317AE Confidentiality of whistleblower's identity**

- 22 (1) A person (the **first person**) contravenes this subsection if:  
23 (a) another person (the **discloser**) makes a disclosure of  
24 information (the **qualifying disclosure**) that qualifies for  
25 protection under this Part; and  
26 (b) the first person discloses any of the following (the  
27 **confidential information**):  
28 (i) the identity of the discloser;  
29 (ii) information that is likely to lead to the identification of  
30 the discloser; and  
31 (c) the confidential information is information that the first  
32 person obtained directly or indirectly because of the  
33 qualifying disclosure; and

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Amendment of the Corporations Act 2001

---

1 (d) the disclosure referred to in paragraph (b) is not authorised  
2 under subsection (2).

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

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

8 (2) A disclosure referred to in paragraph (1)(b) is authorised under this  
9 subsection if it:

10 (a) is made to ASIC; or

11 (b) is made to APRA; or

12 (c) is made to a member of the Australian Federal Police (within  
13 the meaning of the *Australian Federal Police Act 1979*); or

14 (d) is made to a person or body prescribed by the regulations for  
15 the purposes of this paragraph; or

16 (e) is made to someone else with the consent of the discloser.

#### 17 **1317AF Whistleblower policies**

18 (1) A public company must:

19 (a) have a policy that sets out the matters referred to in  
20 subsection (4); and

21 (b) make that policy available to people who may be eligible  
22 whistleblowers in relation to the company.

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

25 (2) A proprietary company that has been a large proprietary company  
26 for any financial year (the ***first financial year***) must, on any day in  
27 any later financial year that is at least 6 months after the last day of  
28 the first financial year:

29 (a) have a policy that sets out the matters referred to in  
30 subsection (4); and

31 (b) make that policy available to people who may be eligible  
32 whistleblowers in relation to the company.

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



# EXPOSURE DRAFT

1 (3) An offence based on subsection (1) or (2) is an offence of strict  
2 liability.

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

4 (4) The matters that a policy must set out for the purposes of  
5 paragraphs (1)(a) and (2)(a) are:

- 6 (a) information about the protections available to  
7 whistleblowers, including protections under this Part; and  
8 (b) how the company will ensure fair treatment of employees of  
9 the company who are mentioned in disclosures that qualify  
10 for protection under this Part, or to whom such disclosures  
11 relate; and  
12 (c) any matters prescribed by the regulations.

## 13 **1317AG Exemption orders—class orders for companies**

14 (1) ASIC may, by legislative instrument, make an order in respect of a  
15 specified class of company relieving companies in the class from  
16 all or specified requirements of section 1317AF.

17 (2) The order may:

- 18 (a) be expressed to be subject to conditions; and  
19 (b) be indefinite or limited to a specified period.

## 20 **8 Subsection 1317E(1) (after table item 45)**

21 Insert:

22 45A subsection 1317AE(1) breach of confidentiality of identity  
of whistleblower

23

## 24 **9 After subsection 1317G(1G)**

25 Insert:

26 *Confidentiality of whistleblower's identity*

27 (1H) A Court may order a person to pay the Commonwealth a pecuniary  
28 penalty if:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Amendment of the Corporations Act 2001

---

- 1 (a) a declaration of contravention by the person has been made  
2 under section 1317E; and  
3 (b) the contravention is of subsection 1317AE(1) (confidentiality  
4 of whistleblower's identity).
- 5 (1J) The maximum amount that the court may order the person to pay  
6 for contravening subsection 1317AE(1) is:  
7 (a) \$200,000 for an individual; or  
8 (b) \$1 million for a body corporate.

### 10 In the appropriate position in Chapter 10

9 Insert:

## 11 Part 10.32—Transitional provisions relating to the 12 Treasury Laws Amendment 13 (Whistleblowers) Act 2017 14

### 15 1644 Application of amendments

- 16 (1) The amendments made by Part 1 of Schedule 1 to the *Treasury*  
17 *Laws Amendment (Whistleblowers) Act 2017* apply in relation to  
18 disclosures made at or after the time that Part commences (the  
19 ***commencement time***).
- 20 (2) Without limiting subsection (1), sections 1317AC and 1317AD, as  
21 in force immediately after the commencement time, also apply at  
22 and after the commencement time in relation to a disclosure that  
23 was made before the commencement time.
- 24 *Whistleblower policies*
- 25 (3) Section 1317AF, as inserted by item 7 of Schedule 1 to the  
26 *Treasury Laws Amendment (Whistleblowers) Act 2017*, applies on  
27 and after 1 January 2019.
- 28 (4) A reference to a financial year in subsection 1317AF(2), as  
29 inserted by that item, is a reference to a financial year that ends on  
30 or after 30 June 2018.

# EXPOSURE DRAFT

Amendments **Schedule 1**

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

---

1 **11 Schedule 3 (after table item 338A)**

2 Insert:

3 338B section 1317AF 60 penalty units.

4

# EXPOSURE DRAFT

# EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Amendment of the Taxation Administration Act 1953

---

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

3 *Taxation Administration Act 1953*

4 **12 Subsection 2(1)**

5 Insert:

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

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

8 *whistleblower entity* means an entity (within the meaning of the  
9 *Income Tax Assessment Act 1997*) other than a body politic.

10 **13 After Part IVC**

11 Insert:

12 **Part IVD—Protection for whistleblowers**  
13

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

- 15 (1) A disclosure of information by a person (the *discloser*) qualifies for  
16 protection under this Part if:
- 17 (a) the discloser is, or has been, an eligible whistleblower in  
18 relation to a whistleblower entity; and
  - 19 (b) the disclosure is made to:
    - 20 (i) a whistleblower disclosee in relation to the  
21 whistleblower entity; or
    - 22 (ii) a legal practitioner, for the purpose of obtaining legal  
23 advice or representation; and
  - 24 (c) the disclosure is covered by subsection (2) or (3).
- 25 (2) This subsection covers a disclosure of information if the discloser  
26 has reasonable grounds to suspect that the information indicates  
27 that any of the following has not complied with a taxation law:  
28 (a) the whistleblower entity;
-

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Amendment of the Taxation Administration Act 1953 **Part 2**

---

- 1 (b) an associate (within the meaning of section 318 of the  
2 *Income Tax Assessment Act 1936*) of the whistleblower  
3 entity.
- 4 (3) This subsection covers a disclosure of information if the discloser  
5 has reasonable grounds to suspect that the information indicates  
6 that any of the following has avoided tax imposed by a law of the  
7 Commonwealth:  
8 (a) the whistleblower entity;  
9 (b) an associate (within the meaning of section 318 of the  
10 *Income Tax Assessment Act 1936*) of the whistleblower  
11 entity.

## 12 **14ZZU Whistleblower disclosees**

- 13 (1) Each of the following is a ***whistleblower disclosee*** in relation to a  
14 whistleblower entity:  
15 (a) the Commissioner;  
16 (b) an auditor, or a member of an audit team conducting an audit,  
17 of the whistleblower entity;  
18 (c) a person or body prescribed for the purposes of this  
19 paragraph in relation to the whistleblower entity.
- 20 (2) If a whistleblower entity is a body corporate, each of the following  
21 is a ***whistleblower disclosee*** in relation to the whistleblower entity:  
22 (a) a director, secretary or senior manager (within the meaning  
23 of the *Corporations Act 2001*) of the body corporate;  
24 (b) a person authorised by the body corporate to receive  
25 disclosures that may qualify for protection under this Part.
- 26 (3) If a whistleblower entity is a trust, a trustee of the trust is a  
27 ***whistleblower disclosee*** in relation to the trust.
- 28 (4) If a whistleblower entity is a partnership, a partner in the  
29 partnership is a ***whistleblower disclosee*** in relation to the  
30 partnership.
- 31 (5) Subsections (1), (2), (3) and (4) do not limit each other.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Amendment of the Taxation Administration Act 1953

---

1 **14ZZV Eligible whistleblowers**

2 Each of the following individuals is an *eligible whistleblower* in  
3 relation to a whistleblower entity:

- 4 (a) an officer of the whistleblower entity;  
5 (b) an employee of the whistleblower entity;  
6 (c) an individual who has a contract for the supply of services or  
7 goods to the whistleblower entity;  
8 (d) an employee of a person who has a contract for the supply of  
9 services or goods to the whistleblower entity;  
10 (e) an individual who is an associate (within the meaning of  
11 section 318 of the *Income Tax Assessment Act 1936*) of the  
12 whistleblower entity;  
13 (f) a spouse or child of an individual referred to in any of  
14 paragraphs (a) to (e);  
15 (g) a dependant of an individual referred to in any of  
16 paragraphs (a) to (e), or of such an individual's spouse;  
17 (h) an individual prescribed by the regulations for the purposes  
18 of this paragraph in relation to the whistleblower entity.

19 **14ZZW Disclosure that qualifies for protection not actionable etc.**

- 20 (1) If a person makes a disclosure that qualifies for protection under  
21 this Part:  
22 (a) the person is not subject to any civil or criminal liability for  
23 making the disclosure; and  
24 (b) no contractual or other remedy may be enforced, and no  
25 contractual or other right may be exercised, against the  
26 person on the basis of the disclosure; and  
27 (c) if the disclosure was a disclosure of information to the  
28 Commissioner—the information is not admissible in  
29 evidence against the person in criminal proceedings or in  
30 proceedings for the imposition of a penalty, other than  
31 proceedings in respect of the falsity of the information.

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

- 35 (2) Without limiting subsection (1):
-

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Amendment of the Taxation Administration Act 1953 **Part 2**

---

- 1 (a) the person has qualified privilege in respect of the disclosure;  
2 and  
3 (b) a contract to which the person is a party may not be  
4 terminated on the basis that the disclosure constitutes a  
5 breach of the contract.
- 6 (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied  
7 that:  
8 (a) a person (the *employee*) is employed in a particular position  
9 under a contract of employment with another person (the  
10 *employer*); and  
11 (b) the employee makes a disclosure that qualifies for protection  
12 under this Part; and  
13 (c) the employer purports to terminate the contract of  
14 employment on the basis of the disclosure;  
15 the court may order that the employee be reinstated in that position  
16 or a position at a comparable level.

## 17 **14ZZX Victimization prohibited**

18 *Actually causing detriment to another person*

- 19 (1) A person (the *first person*) commits an offence if:  
20 (a) the first person engages in conduct; and  
21 (b) the first person's conduct causes any detriment to another  
22 person (the *second person*); and  
23 (c) when the first person engages in the conduct, the first person  
24 believes or suspects that the second person or any other  
25 person made, may have made, proposes to make or could  
26 make a disclosure that qualifies for protection under this Part;  
27 and  
28 (d) the belief or suspicion referred to in paragraph (c) is the  
29 reason, or part of the reason, for the conduct.

30 Penalty: 60 penalty units.

31 *Threatening to cause detriment to another person*

- 32 (2) A person (the *first person*) commits an offence if:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Amendment of the Taxation Administration Act 1953

---

- 1 (a) the first person makes to another person (the *second person*)  
2 a threat to cause any detriment to the second person or to a  
3 third person; and  
4 (b) the first person:  
5 (i) intends the second person to fear that the threat will be  
6 carried out; or  
7 (ii) is reckless as to causing the second person to fear that  
8 the threat will be carried out; and  
9 (c) the first person makes the threat because a person:  
10 (i) makes a disclosure that qualifies for protection under  
11 this Part; or  
12 (ii) may make a disclosure that would qualify for protection  
13 under this Part.

14 Penalty: 60 penalty units.

#### 15 *Threats*

- 16 (3) For the purposes of subsection (2), a threat may be:  
17 (a) express or implied; or  
18 (b) conditional or unconditional.  
19 (4) In a prosecution for an offence against subsection (2), it is not  
20 necessary to prove that the person threatened actually feared that  
21 the threat would be carried out.

#### 22 *Detriment*

- 23 (5) In this section, *detriment* includes (without limitation) any of the  
24 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 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;



# EXPOSURE DRAFT

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

## 3 **14ZZY Right to compensation**

- 4 (1) This subsection applies to a person (the *first person*) if:  
5 (a) the first person engages in conduct; and  
6 (b) another person (the *victim*) suffers damage because of the  
7 conduct; and  
8 (c) when the first person engages in the conduct, the first person  
9 believes or suspects that the victim or any other person made,  
10 may have made, proposes to make or could make a disclosure  
11 that qualifies for protection under this Part; 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 Note: A threat to cause detriment to another person may be conduct for the  
15 purposes of this subsection.

- 16 (2) This subsection applies to a person (the *first person*) if:  
17 (a) the first person is an officer or employee of a body corporate;  
18 and  
19 (b) subsection (1) applies to the body corporate because of  
20 conduct engaged in by the body corporate and damage  
21 suffered by a person (the *victim*); and  
22 (c) the first person:  
23 (i) has aided, abetted, counselled or procured the conduct  
24 or the making of the threat; or  
25 (ii) has induced, whether by threats or promises or  
26 otherwise, the conduct or the making of the threat; or  
27 (iii) has been in any way, by act or omission, directly or  
28 indirectly, knowingly concerned in, or party to, the  
29 conduct or the making of the threat; or  
30 (iv) has conspired with others to effect the conduct or the  
31 making of the threat.
- 32 (3) If subsection (1) or (2) applies to a person, the person is liable to  
33 compensate the victim for the damage.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Amendment of the Taxation Administration Act 1953

---

- 1 (4) In any proceeding where a person (the *claimant*) seeks  
2 compensation under this section from another person (the *other*  
3 *person*):  
4 (a) the claimant bears the onus of proving the matters in  
5 paragraphs (1)(a) and (b); and  
6 (b) if the claimant discharges that onus—the other person bears  
7 the onus of proving that the claim is not made out.

#### 8 **14ZZZ Name of discloser or victim not to be published by court**

- 9 (1) This section applies to a proceeding (including an appeal) before a  
10 court if the proceeding relates to a person in the person's capacity  
11 as:  
12 (a) a discloser (within the meaning of section 14ZZT); or  
13 (b) a victim (within the meaning of section 14ZZY).  
14 (2) The court must not publish (in electronic form or otherwise), in  
15 relation to the proceeding, the person's name.  
16 (3) The court may order that this section does not apply in relation to a  
17 proceeding or a person if the court thinks it necessary in the  
18 interests of justice to do so.

#### 19 **14ZZZA Identifying information not to be disclosed etc. to courts or** 20 **tribunals**

- 21 If a person (the *discloser*) makes a disclosure of information that  
22 qualifies for protection under this Part, a person is not to be  
23 required:  
24 (a) to disclose to a court or tribunal:  
25 (i) the identity of the discloser; or  
26 (ii) information that is likely to lead to the identification of  
27 the discloser; or  
28 (b) to produce to a court or tribunal a document containing:  
29 (i) the identity of the discloser; or  
30 (ii) information that is likely to lead to the identification of  
31 the discloser;  
32 except where it is necessary to do so for the purposes of giving  
33 effect to this Part.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Amendment of the Taxation Administration Act 1953 **Part 2**

---

## 14ZZZB Costs only if proceedings instituted vexatiously etc.

- 1
- 2 (1) This section applies to a proceeding (including an appeal) in a  
3 court in relation to a matter arising under section 14ZZY.
- 4 (2) The victim (within the meaning of that section) must not be  
5 ordered by the court to pay costs incurred by another party to the  
6 proceedings, except in accordance with subsection (3) of this  
7 section.
- 8 (3) The victim may be ordered to pay the costs only if:  
9 (a) the court is satisfied that the victim instituted the proceedings  
10 vexatiously or without reasonable cause; or  
11 (b) the court is satisfied that the victim's unreasonable act or  
12 omission caused the other party to incur the costs.

## 14ZZZC Confidentiality of whistleblower's identity

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

28 Penalty: 25 penalty units.

- 29 (2) A disclosure referred to in paragraph (1)(b) is authorised under this  
30 subsection if it:  
31 (a) is made to the Commissioner; or  
32 (b) is made to a member of the Australian Federal Police (within  
33 the meaning of the *Australian Federal Police Act 1979*); or
-

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Amendment of the Taxation Administration Act 1953

---

1 (c) is made to a person or body prescribed by the regulations for  
2 the purposes of this paragraph; or

3 (d) is made to someone else with the consent of the discloser.

#### 4 **14 Application**

5 The amendments made by this Part apply in relation to disclosures  
6 made on or after the commencement of this Part.

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Other amendments **Part 3**

---

1 **Part 3—Other amendments**

2 ***Banking Act 1959***

3 **15 Division 1 of Part VIA**

4 Repeal the Division.

5 **16 Division 2 of Part VIA (heading)**

6 Repeal the heading.

7 **17 Application**

8 Despite the repeal of Division 1 of Part VIA of the *Banking Act 1959* by  
9 item 15, that Division continues to apply, at and after the  
10 commencement of this item, in relation to:

- 11 (a) disclosures of information made before that commencement;  
12 and  
13 (b) conduct referred to in subsection 52C(1) of the *Banking Act*  
14 *1959*, as in force immediately before that commencement,  
15 that is engaged in before that commencement; and  
16 (c) a threat referred to in subsection 52C(2) of the *Banking Act*  
17 *1959*, as in force immediately before that commencement,  
18 that is made before that commencement.

19 ***Insurance Act 1973***

20 **18 Subdivision A of Division 4 of Part IIIA**

21 Repeal the Subdivision.

22 **19 Subdivision B of Division 4 of Part IIIA (heading)**

23 Repeal the heading.

24 **20 Application**

25 Despite the repeal of Subdivision A of Division 4 of Part IIIA of the  
26 *Insurance Act 1973* by item 18, that Subdivision continues to apply, at  
27 and after the commencement of this item, in relation to:

# EXPOSURE DRAFT

Schedule 1 Amendments  
Part 3 Other amendments

---

- 1 (a) disclosures of information made before that commencement;  
2 and  
3 (b) conduct referred to in subsection 38C(1) of the *Insurance Act*  
4 *1973*, as in force immediately before that commencement,  
5 that is engaged in before that commencement; and  
6 (c) a threat referred to in subsection 38C(2) of the *Insurance Act*  
7 *1973*, as in force immediately before that commencement,  
8 that is made before that commencement.

9 ***Life Insurance Act 1995***

10 **21 Subdivision A of Division 5 of Part 7**

11 Repeal the Subdivision.

12 **22 Subdivision B of Division 5 of Part 7 (heading)**

13 Repeal the heading.

14 **23 Application**

15 Despite the repeal of Subdivision A of Division 5 of Part 7 of the *Life*  
16 *Insurance Act 1995* by item 21, that Subdivision continues to apply, at  
17 and after the commencement of this item, in relation to:

- 18 (a) disclosures of information made before that commencement;  
19 and  
20 (b) conduct referred to in subsection 156C(1) of the *Life*  
21 *Insurance Act 1995*, as in force immediately before that  
22 commencement, that is engaged in before that  
23 commencement; and  
24 (c) a threat referred to in subsection 156C(2) of the *Life*  
25 *Insurance Act 1995*, as in force immediately before that  
26 commencement, in relation to such disclosures, that is made  
27 before that commencement.

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

29 **24 Division 1 of Part 29A**

30 Repeal the Division.

---

# EXPOSURE DRAFT

Amendments **Schedule 1**  
Other amendments **Part 3**

---

1     **25 Division 2 of Part 29A (heading)**

2             Repeal the heading.

3     **26 Application**

4             Despite the repeal of Division 1 of Part 29A of the *Superannuation*  
5             *Industry (Supervision) Act 1993* by item 24, that Division continues to  
6             apply, at 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 336C(1) of the  
10                 *Superannuation Industry (Supervision) Act 1993*, as in force  
11                 immediately before that commencement, that is engaged in  
12                 before that commencement; and

13                 (c) a threat referred to in subsection 336C(2) of the  
14                 *Superannuation Industry (Supervision) Act 1993*, as in force  
15                 immediately before that commencement, that is made before  
16                 that commencement.