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The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Corporations Act 2001

1 Section 9

Insert:

- **eligible whistleblower** has the meaning given by section 1317AAD.
- **whistleblower disclosee** has the meaning given by section 1317AAB.
- **whistleblower regulated entity** has the meaning given by section 1317AAA.
- **whistleblower third party disclosee** has the meaning given by section 1317AAC.

2 Section 1317AA

Repeal the section, substitute:

1317AA Disclosures qualifying for protection under this Part

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

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

(b) the disclosure is made to:

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

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

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

(c) the disclosure is covered by subsection (2) or (3).
Misconduct or an improper state of affairs or circumstances

(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:

(a) the whistleblower regulated entity; or

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

Other disclosable conduct

(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:

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

(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;

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

(i) this Act;

(ii) the ASIC Act;

(iii) the Banking Act 1959;

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

(v) the Insurance Act 1973;

(vi) the Life Insurance Act 1995;

(vii) the National Consumer Credit Protection Act 2009;

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

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

(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

(e) represents a danger to the public or the financial system; or
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Part 1

1317AAA Whistleblower regulated entities

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

(a) a company;
(b) a corporation to which paragraph 51(xx) of the Constitution applies;
(c) an ADI (within the meaning of the *Banking Act 1959*), an authorised NOHC (within the meaning of that Act) or a subsidiary of an ADI or an authorised NOHC;
(d) a general insurer (within the meaning of the *Insurance Act 1973*), an authorised NOHC (within the meaning of that Act) or a subsidiary of a general insurer or an authorised NOHC;
(e) a life company (within the meaning of the *Life Insurance Act 1995*), a registered NOHC (within the meaning of that Act) or a subsidiary of a life company or a registered NOHC;
(f) a superannuation entity or a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity.

1317AAB Whistleblower disclosees

(1) Each of the following is a **whistleblower disclosee** in relation to a whistleblower regulated entity:

(a) ASIC;
(b) APRA;
(c) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);
(d) a person or body prescribed for the purposes of this paragraph in relation to the whistleblower regulated entity.

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

(2) Each of the following is a **whistleblower disclosee** in relation to a whistleblower regulated entity that is a body corporate:
Schedule 1 Amendments
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(a) an auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate;
(b) an actuary of the body corporate or a related body corporate;
(c) a director, secretary or senior manager of the body corporate or a related body corporate;
(d) a person authorised by the body corporate to receive disclosures that may qualify for protection under this Part.

(3) Each of the following is a whistleblower disclosee in relation to a whistleblower regulated entity that is a superannuation entity:

(a) an auditor, or a member of an audit team conducting an audit, of the superannuation entity;
(b) an actuary of the superannuation entity;
(c) an individual who is a trustee (within the meaning of the Superannuation Industry (Supervision) Act 1993) of the superannuation entity;
(d) a director of a body corporate that is the trustee (within the meaning of the Superannuation Industry (Supervision) Act 1993) of the superannuation entity;
(e) a person authorised by the trustee or trustees (within the meaning of the Superannuation Industry (Supervision) Act 1993) of the superannuation entity to receive disclosures that may qualify for protection under this Part.

(4) The regulations may prescribe persons or bodies that are whistleblower disclosees in relation to all whistleblower regulated entities, or in relation to a class or classes of whistleblower regulated entities.

(5) Subsections (1), (2), (3) and (4) do not limit each other.

1317AAC Whistleblower third party disclosees

(1) This section applies if:

(a) a person (the discloser) has previously disclosed information to a whistleblower disclosee referred to in subsection 1317AAB(1); and

(b) a reasonable period has passed since that disclosure was made; and
Amendments Schedule 1
Amendment of the Corporations Act 2001 Part 1

(c) the discloser has reasonable grounds to believe that there is
an imminent risk of serious harm or danger to public health
or safety, or to the financial system, if the information is not
acted on immediately.

(2) Each of the following is a whistleblower third party disclosee in
relation to the information:
(a) a member of the Parliament of the Commonwealth, a State or
a Territory;
(b) a journalist.

(3) In this section:
journalist means a person who is working in a professional
capacity as a journalist.

1317AAD Eligible whistleblowers

Each of the following individuals is an eligible whistleblower in
relation to a whistleblower regulated entity:
(a) an officer of the whistleblower regulated entity;
(b) an employee of the whistleblower regulated entity;
(c) an individual who has a contract for the supply of services or
goods to the whistleblower regulated entity;
(d) an employee of a person who has a contract for the supply of
services or goods to the whistleblower regulated entity;
(e) an individual who is an associate of the whistleblower
regulated entity;
(f) for a whistleblower regulated entity that is a superannuation
entity—an individual who is a trustee (within the meaning of
the Superannuation Industry (Supervision) Act 1993),
custodian (within the meaning of that Act) or investment
manager (within the meaning of that Act) of the
superannuation entity;
(g) a spouse or child of an individual referred to in any of
paragraphs (a) to (f);
(h) a dependant of an individual referred to in any of
paragraphs (a) to (f), or of such an individual’s spouse;
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3 After paragraph 1317AB(1)(b)

Insert:

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

4 Subsection 1317AB(1) (note)

Repeal the note, substitute:

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

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

Repeal the paragraphs, substitute:

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

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

6 At the end of section 1317AC

Add:

Detriment

(6) In this section, detriment includes (without limitation) any of the following:

(a) dismissal of an employee;

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

7 Sections 1317AD and 1317AE
Repeal the sections, substitute:

1317AD Right to compensation
(1) This subsection applies to a person (the first person) if:
(a) the first person engages in conduct; and
(b) another person (the victim) suffers damage because of the
conduct; and
(c) when the first person engages in the conduct, the first person
believes or suspects that the victim or any other person made,
may have made, proposes to make or could make a disclosure
that qualifies for protection under this Part; and
(d) the belief or suspicion referred to in paragraph (c) is the
reason, or part of the reason, for the conduct.

Note: A threat to cause detriment to another person may be conduct for the
purposes of this subsection.

(2) This subsection applies to a person (the first person) if:
(a) the first person is an officer or employee of a body corporate;
and
(b) subsection (1) applies to the body corporate because of
conduct engaged in by the body corporate and damage
suffered by a person (the victim); and
(c) the first person:
(i) has aided, abetted, counselled or procured the conduct
or the making of the threat; or
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(ii) has induced, whether by threats or promises or
otherwise, the conduct or the making of the threat; or
(iii) has been in any way, by act or omission, directly or
indirectly, knowingly concerned in, or party to, the
conduct or the making of the threat; or
(iv) has conspired with others to effect the conduct or the
making of the threat.

(3) If subsection (1) or (2) applies to a person, the person is liable to
compensate the victim for the damage.

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

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

(1) This section applies to a proceeding (including an appeal) before a
court if the proceeding relates to a person in the person’s capacity
as:
(a) a discloser (within the meaning of section 1317AA); or
(b) a victim (within the meaning of section 1317AD).

(2) The court must not publish (in electronic form or otherwise), in
relation to the proceeding, the person’s name.

(3) The court may order that this section does not apply in relation to a
proceeding or a person if the court thinks it necessary in the
interests of justice to do so.

1317ADB Identifying information not to be disclosed etc. to courts
or tribunals

If a person (the discloser) makes a disclosure of information that
qualifies for protection under this Part, a person is not to be
required to do any of the following, except where it is necessary to
do so for the purposes of giving effect to this Part:
(a) disclose to a court or tribunal:
   (i) the identity of the discloser; or
   (ii) information that is likely to lead to the identification of
        the discloser;
(b) produce to a court or tribunal a document containing:
   (i) the identity of the discloser; or
   (ii) information that is likely to lead to the identification of
        the discloser.

1317AD Costs only if proceedings instituted vexatiously etc.

(1) This section applies to a proceeding (including an appeal) in a
court in relation to a matter arising under section 1317AD.

(2) The victim (within the meaning of that section) must not be
ordered by the court to pay costs incurred by another party to the
proceedings, except in accordance with subsection (3) of this
section.

(3) The victim may be ordered to pay the costs only if:
   (a) the court is satisfied that the victim instituted the proceedings
       vexatiously or without reasonable cause; or
   (b) the court is satisfied that the victim’s unreasonable act or
       omission caused the other party to incur the costs.

1317AE Confidentiality of whistleblower’s identity

(1) A person (the first person) contravenes this subsection if:
   (a) another person (the discloser) makes a disclosure of
       information (the qualifying disclosure) that qualifies for
       protection under this Part; and
   (b) the first person discloses any of the following (the
       confidential information):
       (i) the identity of the discloser;
       (ii) information that is likely to lead to the identification of
           the discloser; and
       (c) the confidential information is information that the first
           person obtained directly or indirectly because of the
           qualifying disclosure; and
Schedule 1 Amendments

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

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

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

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

(a) is made to ASIC; or
(b) is made to APRA; or
(c) is made to a member of the Australian Federal Police (within the meaning of the Australian Federal Police Act 1979); or
(d) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or
(e) is made to someone else with the consent of the discloser.

1317AF Whistleblower policies

(1) A public company must:

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

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

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

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

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

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

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).
(3) An offence based on subsection (1) or (2) is an offence of strict liability.

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

(4) The matters that a policy must set out for the purposes of paragraphs (1)(a) and (2)(a) are:
   (a) information about the protections available to whistleblowers, including protections under this Part; and
   (b) how the company will ensure fair treatment of employees of the company who are mentioned in disclosures that qualify for protection under this Part, or to whom such disclosures relate; and
   (c) any matters prescribed by the regulations.

1317AG  Exemption orders—class orders for companies

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

   (2) The order may:
      (a) be expressed to be subject to conditions; and
      (b) be indefinite or limited to a specified period.

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

Insert:

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

9 After subsection 1317G(1G)

Insert:

Confidentiality of whistleblower’s identity

(1H) A Court may order a person to pay the Commonwealth a pecuniary penalty if:
Schedule 1 Amendments
Part 1 Amendment of the Corporations Act 2001

(a) a declaration of contravention by the person has been made
under section 1317E; and
(b) the contravention is of subsection 1317AE(1) (confidentiality
of whistleblower’s identity).

(1J) The maximum amount that the court may order the person to pay
for contravening subsection 1317AE(1) is:
(a) $200,000 for an individual; or
(b) $1 million for a body corporate.

10 In the appropriate position in Chapter 10
Insert:

Part 10.32—Transitional provisions relating to the
Treasury Laws Amendment
(Whistleblowers) Act 2017

1644 Application of amendments

(1) The amendments made by Part 1 of Schedule 1 to the Treasury
Laws Amendment (Whistleblowers) Act 2017 apply in relation to
disclosures made at or after the time that Part commences (the
commencement time).

(2) Without limiting subsection (1), sections 1317AC and 1317AD, as
in force immediately after the commencement time, also apply at
and after the commencement time in relation to a disclosure that
was made before the commencement time.

Whistleblower policies

(3) Section 1317AF, as inserted by item 7 of Schedule 1 to the
Treasury Laws Amendment (Whistleblowers) Act 2017, applies on
and after 1 January 2019.

(4) A reference to a financial year in subsection 1317AF(2), as
inserted by that item, is a reference to a financial year that ends on
or after 30 June 2018.
11 Schedule 3 (after table item 338A)

Insert:

338B section 1317AF 60 penalty units.
Part 2—Amendment of the Taxation Administration Act 1953

Taxation Administration Act 1953

12 Subsection 2(1)

Insert:

eligible whistleblower has the meaning given by section 14ZZV.

whistleblower disclosee has the meaning given by section 14ZZU.

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

13 After Part IVC

Insert:

Part IVD—Protection for whistleblowers

14ZZT Disclosures qualifying for protection under this Part

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

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

(b) the disclosure is made to:

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

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

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

(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 has not complied with a taxation law:

(a) the whistleblower entity;
Amendments Schedule 1
Amendment of the Taxation Administration Act 1953 Part 2

(b) an associate (within the meaning of section 318 of the
Income Tax Assessment Act 1936) of the whistleblower
entity.

(3) This subsection covers a disclosure of information if the discloser
has reasonable grounds to suspect that the information indicates
that any of the following has avoided tax imposed by a law of the
Commonwealth:
(a) the whistleblower entity;
(b) an associate (within the meaning of section 318 of the
Income Tax Assessment Act 1936) of the whistleblower
entity.

14ZZU Whistleblower disclosees

(1) Each of the following is a whistleblower disclosee in relation to a
whistleblower entity:
(a) the Commissioner;
(b) an auditor, or a member of an audit team conducting an audit,
of the whistleblower entity;
(c) a person or body prescribed for the purposes of this
paragraph in relation to the whistleblower entity.

(2) If a whistleblower entity is a body corporate, each of the following
is a whistleblower disclosee in relation to the whistleblower entity:
(a) a director, secretary or senior manager (within the meaning
of the Corporations Act 2001) of the body corporate;
(b) a person authorised by the body corporate to receive
disclosures that may qualify for protection under this Part.

(3) If a whistleblower entity is a trust, a trustee of the trust is a
whistleblower disclosee in relation to the trust.

(4) If a whistleblower entity is a partnership, a partner in the
partnership is a whistleblower disclosee in relation to the
partnership.

(5) Subsections (1), (2), (3) and (4) do not limit each other.
14ZZV  Eligible whistleblowers

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

(a) an officer of the whistleblower entity;
(b) an employee of the whistleblower entity;
(c) an individual who has a contract for the supply of services or goods to the whistleblower entity;
(d) an employee of a person who has a contract for the supply of services or goods to the whistleblower entity;
(e) an individual who is an associate (within the meaning of section 318 of the Income Tax Assessment Act 1936) of the whistleblower entity;
(f) a spouse or child of an individual referred to in any of paragraphs (a) to (e);
(g) a dependant of an individual referred to in any of paragraphs (a) to (e), or of such an individual’s spouse;
(h) an individual prescribed by the regulations for the purposes of this paragraph in relation to the whistleblower entity.

14ZZW  Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under this Part:

(a) the person is not subject to any civil or criminal liability for making the disclosure; and
(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure; and
(c) if the disclosure was a disclosure of information to the Commissioner—the information is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

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

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

(3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
   (a) a person (the employee) is employed in a particular position under a contract of employment with another person (the employer); and
   (b) the employee makes a disclosure that qualifies for protection under this Part; and
   (c) the employer purports to terminate the contract of employment on the basis of the disclosure;
   the court may order that the employee be reinstated in that position or a position at a comparable level.

14ZZX Victimisation prohibited

Actually causing detriment to another person

(1) A person (the first person) commits an offence if:
   (a) the first person engages in conduct; and
   (b) the first person’s conduct causes any detriment to another person (the second person); and
   (c) when the first person engages in the conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
   (d) the belief or suspicion referred to in paragraph (c) is the reason, or part of the reason, for the conduct.

Penalty: 60 penalty units.

Threatening to cause detriment to another person

(2) A person (the first person) commits an offence if:
(a) the first person makes to another person (the second person) a threat to cause any detriment to the second person or to a third person; and

(b) the first person:
   (i) intends the second person to fear that the threat will be carried out; or
   (ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(c) the first person makes the threat because a person:
   (i) makes a disclosure that qualifies for protection under this Part; or
   (ii) may make a disclosure that would qualify for protection under this Part.

Penalty: 60 penalty units.

Threats

(3) For the purposes of subsection (2), a threat may be:
   (a) express or implied; or
   (b) conditional or unconditional.

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

Detriment

(5) In this section, detriment includes (without limitation) any of the following:
   (a) dismissal of an employee;
   (b) injury of an employee in his or her employment;
   (c) alteration of an employee’s position to his or her disadvantage;
   (d) discrimination between an employee and other employees of the same employer;
   (e) harassment or intimidation of a person;
   (f) harm or injury to a person, including psychological harm;
   (g) damage to a person’s property;
14ZZY Right to compensation

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

Note: A threat to cause detriment to another person may be conduct for the purposes of this subsection.

(2) This subsection applies to a person (the first person) if:
   (a) the first person is an officer or employee of a body corporate; and
   (b) subsection (1) applies to the body corporate because of conduct engaged in by the body corporate and damage suffered by a person (the victim); and
   (c) the first person:
      (i) has aided, abetted, counselled or procured the conduct or the making of the threat; or
      (ii) has induced, whether by threats or promises or otherwise, the conduct or the making of the threat; or
      (iii) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the conduct or the making of the threat; or
      (iv) has conspired with others to effect the conduct or the making of the threat.

(3) If subsection (1) or (2) applies to a person, the person is liable to compensate the victim for the damage.

(h) damage to a person’s reputation;
(i) damage to a person’s business or financial position.
(4) In any proceeding where a person (the claimant) seeks compensation under this section from another person (the other person):

(a) the claimant bears the onus of proving the matters in paragraphs (1)(a) and (b); and

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

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

(1) This section applies to a proceeding (including an appeal) before a court if the proceeding relates to a person in the person’s capacity as:

(a) a discloser (within the meaning of section 14ZZT); or

(b) a victim (within the meaning of section 14ZZY).

(2) The court must not publish (in electronic form or otherwise), in relation to the proceeding, the person’s name.

(3) The court may order that this section does not apply in relation to a proceeding or a person if the court thinks it necessary in the interests of justice to do so.

14ZZZA Identifying information not to be disclosed etc. to courts or tribunals

If a person (the discloser) makes a disclosure of information that qualifies for protection under this Part, a person is not to be required:

(a) to disclose to a court or tribunal:

(i) the identity of the discloser; or

(ii) information that is likely to lead to the identification of the discloser; or

(b) to produce to a court or tribunal a document containing:

(i) the identity of the discloser; or

(ii) information that is likely to lead to the identification of the discloser;

except where it is necessary to do so for the purposes of giving effect to this Part.
14ZZZB Costs only if proceedings instituted vexatiously etc.

(1) This section applies to a proceeding (including an appeal) in a court in relation to a matter arising under section 14ZZY.

(2) The victim (within the meaning of that section) must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (3) of this section.

(3) The victim may be ordered to pay the costs only if:
   (a) the court is satisfied that the victim instituted the proceedings vexatiously or without reasonable cause; or
   (b) the court is satisfied that the victim’s unreasonable act or omission caused the other party to incur the costs.

14ZZZC Confidentiality of whistleblower’s identity

(1) A person (the first person) commits an offence if:
   (a) another person (the discloser) makes a disclosure of information (the qualifying disclosure) that qualifies for protection under this Part; and
   (b) the first person discloses any of the following (the confidential information):
      (i) the identity of the discloser;
      (ii) information that is likely to lead to the identification of the discloser; and
   (c) the confidential information is information that the first person obtained directly or indirectly because of the qualifying disclosure; and
   (d) the disclosure referred to in paragraph (b) is not authorised under subsection (2).

Penalty: 25 penalty units.

(2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:
   (a) is made to the Commissioner; or
   (b) is made to a member of the Australian Federal Police (within the meaning of the Australian Federal Police Act 1979); or
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1. (c) is made to a person or body prescribed by the regulations for
   the purposes of this paragraph; or
2. (d) is made to someone else with the consent of the discloser.

14 Application

The amendments made by this Part apply in relation to disclosures
made on or after the commencement of this Part.
Part 3—Other amendments

Banking Act 1959

15 Division 1 of Part VIA
Repeal the Division.

16 Division 2 of Part VIA (heading)
Repeal the heading.

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

(a) disclosures of information made before that commencement; and
(b) conduct referred to in subsection 52C(1) of the Banking Act 1959, as in force immediately before that commencement, that is engaged in before that commencement; and
(c) a threat referred to in subsection 52C(2) of the Banking Act 1959, as in force immediately before that commencement, that is made before that commencement.

Insurance Act 1973

18 Subdivision A of Division 4 of Part IIIA
Repeal the Subdivision.

19 Subdivision B of Division 4 of Part IIIA (heading)
Repeal the heading.

20 Application
Despite the repeal of Subdivision A of Division 4 of Part IIIA of the Insurance Act 1973 by item 18, that Subdivision continues to apply, at and after the commencement of this item, in relation to:
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(a) disclosures of information made before that commencement;
and
(b) conduct referred to in subsection 38C(1) of the Insurance Act 1973, as in force immediately before that commencement, that is engaged in before that commencement; and
(c) a threat referred to in subsection 38C(2) of the Insurance Act 1973, as in force immediately before that commencement, that is made before that commencement.

Life Insurance Act 1995

21 Subdivision A of Division 5 of Part 7
Repeal the Subdivision.

22 Subdivision B of Division 5 of Part 7 (heading)
Repeal the heading.

23 Application
Despite the repeal of Subdivision A of Division 5 of Part 7 of the Life Insurance Act 1995 by item 21, that Subdivision continues to apply, at and after the commencement of this item, in relation to:
(a) disclosures of information made before that commencement;
and
(b) conduct referred to in subsection 156C(1) of the Life Insurance Act 1995, as in force immediately before that commencement, that is engaged in before that commencement; and
(c) a threat referred to in subsection 156C(2) of the Life Insurance Act 1995, as in force immediately before that commencement, in relation to such disclosures, that is made before that commencement.

Superannuation Industry (Supervision) Act 1993

24 Division 1 of Part 29A
Repeal the Division.
25 Division 2 of Part 29A (heading)
Repeal the heading.

26 Application
Despite the repeal of Division 1 of Part 29A of the *Superannuation Industry (Supervision) Act 1993* by item 24, that Division continues to apply, at and after the commencement of this item, in relation to:

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

(b) conduct referred to in subsection 336C(1) of the *Superannuation Industry (Supervision) Act 1993*, as in force immediately before that commencement, that is engaged in before that commencement; and

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