



New Law Protects Whistle-Blowers in Australia

By Leah Shepherd

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Australia has passed a law to protect whistle-blowers and require companies to have a formal whistle-blower policy in place before Jan. 1, 2020. This law, which applies to all companies registered under Australia's Corporations Act 2001, severely penalizes companies and individuals who violate its requirements to keep whistle-blowers anonymous and not retaliate against them. Under the law, protected whistle-blowers include officers and employees of a company.

The law casts "a wide net and really could produce whistle-blowers in companies of various kinds, depending on the industry," said Jennifer Pacella, assistant professor of business law and ethics at the Indiana University Kelley School of Business.

The Australian law protects whistle-blowers who have reasonable grounds to suspect:

- Misconduct or an "improper state of affairs or circumstances."
- A violation of the Corporations Act 2001, the Australian Securities and Investments Commission Act, or other insurance statutes.
- Conduct that violates any law that is punishable by imprisonment for 12 months.
- A danger to the public or the financial system. Examples of this include insider trading, fraud, bribery, failure to comply with statutory accounting and reporting requirements, money laundering, and using legal loopholes to harm the administration of government programs.

The law does not apply to information about:

- Work-related grievances.
- Interpersonal conflicts.
- Decisions relating to hiring, promoting or transferring the whistle-blower.
- Decisions related to disciplinary action against the whistle-blower, such as suspension or firing.

A whistle-blower can disclose information to:

- An officer or senior manager of the company.
- An auditor or member of an audit team.
- An actuary of the company.
- A lawyer.
- Someone authorized by the company to receive protected disclosures.
- The Australian Securities and Investments Commission.
- The Australian Prudential Regulation Authority.

Whistle-blowers may take their information to a journalist or a member of parliament, but only after they raise the issue

internally, wait 90 days and determine that the company has not taken action to address the issue.

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Adopt a Formal Policy

The law requires all public companies in Australia to adopt a whistle-blower policy if they have consolidated group revenue of \$50 million or more, consolidated gross assets of \$25 million or more, or 100 or more employees at the end of the financial year.

The whistle-blower policy must contain information about:

- The protections available to the whistle-blower.
- How to make a disclosure, including details about the people to whom disclosures may be made.
- How the company can support whistle-blowers and protect them from retaliation.
- The procedures the company will use to investigate disclosures.
- How the company will ensure fair treatment of employees who are mentioned in disclosures.
- The methods that will be used to make the policy available to employees.

Protect Anonymity and Avoid Retaliation

Many whistle-blowers wish to remain anonymous due to concerns about their personal safety, career prospects and future livelihood. Employers cannot legally reveal the identity of anonymous whistle-blowers.

There are significant penalties for breaching a whistle-blower's anonymity or retaliating against—or threatening to retaliate against—a whistle-blower. For companies, it's either \$10.5 million Australian dollars (approximately US\$7.2 million) or three times the amount of the benefit derived or detriment avoided because of the legal violation. For individuals, it's either \$1.05 million Australian dollars (approximately US\$720,510) or three times the amount of the benefit derived or detriment avoided because of the legal violation.

Failure to comply with the confidentiality and anti-retaliation provisions of the law could be a criminal offense, punishable by fines and/or imprisonment for two years.

Retaliation includes firing the whistle-blower; adjusting job duties to negatively impact the whistle-blower; discrimination; harassment; intimidation; physical harm; psychological harm; and damage to his or her property, reputation or financial status.

Establish Trust

If there's a complaint about misconduct, usually the first place someone goes is a supervisor or HR professional. HR should "address all concerns that come their way, or at least investigate them to see if they have merit or not," Pacella said.

How the organization responds to a complaint is crucial to building trust, noted Deb Muller, CEO of HR Acuity in Florham Park, N.J. "When employees see something going wrong in the organization, they expect it to be handled in a proper manner, a consistent manner, and until they see that, they will not have trust in the organization."

A common mistake employers make is conducting internal investigations without documenting them well, said Juliette Gust,

president of Ethics Suite in Phoenix. As part of all internal investigations, be sure to carefully document the dates involved, interview notes, communications about the investigation, actions taken in response and the reasons for those actions.

Muller said it's rare for someone to purposely lie about corporate misconduct. But sometimes there's a perception problem or an interpersonal conflict that doesn't rise to the level of a legal violation. Still, it's good for HR to hear about those things so that the company can recognize and address any patterns of behavior that are not appropriate for a workplace.

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