

1 Commonwealth

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalties / offences / civil actions
<u>Fair Work (Registered Organisations) Act 2009 (Cth)</u>	<p>A disclosure of information (in relation to a breach of a Commonwealth law) by a person, in relation to The Salvation Army (TSA), qualifies for protection under the <i>Fair Work (Registered Organisations) Act 2009 (Cth)</i> (FWRO Act), if:</p> <ol style="list-style-type: none"> 1. the person making the disclosure is: <ol style="list-style-type: none"> (a) an officer or former officer; (b) an employee or former employee; or (c) a member or former member, of TSA or a branch of TSA; (d) a person (or an officer, former officer, employee or former employee of such person) who has or had a contract for the supply of services or goods to, or any other transaction with: <ol style="list-style-type: none"> (i) TSA or a branch of TSA; or (ii) an officer or employee of TSA or a branch of TSA, who is or was acting on behalf of TSA or a branch of TSA, <p>– Section 337A(1)(a).</p> 2. such person (or a lawyer on their behalf – disclosure to a lawyer meets the criteria for protection if requirement 1 above and requirement 3 below are also met) makes the disclosure to: <ol style="list-style-type: none"> (a) the General Manager of the Fair Work Commission (FWC); (b) a tribunal member of the FWC; (c) a staff member of the FWC; or (d) a staff member of the Office of the Fair Work Ombudsman, <p>– Section 337A(1)(b).</p> <p>Note: <i>a person may be eligible for protection even if the disclosure is only made directly to TSA, so long as the disclosure could have been reported to the FWC – Section 337BA(1)</i></p> 3. the person making such a disclosure has reasonable grounds to suspect that the information indicates one or more instances of disclosable conduct by: <ol style="list-style-type: none"> (a) TSA or a branch of TSA; or (b) an officer or employee of TSA or of a branch of TSA, <p>– Section 337A(1)(c).</p> 	<p>1. TSA must not take any action against disclosers</p> <p>A person making a disclosure under the FWRO Act:</p> <ol style="list-style-type: none"> (a) is not subject to any civil liability (or criminal liability); (b) cannot have a contractual or other remedy enforced or exercised against the person (i.e., termination of employment contract or a services agreement etc) making the disclosure on the basis of the disclosure, meaning TSA cannot take such actions against such person – Section 337B. <p>2. TSA must not take or threaten to take reprisal against disclosers</p> <p>A person making a disclosure under the FWRO Act is protected from reprisals or the threat of reprisals (either by act or by omission), on the basis of the disclosure. Therefore, TSA cannot take reprisal or threaten to take reprisal against such a person (i.e., dismissal or the threat of dismissal, harassment or intimidation, removal from a position or alteration of a position or the threat of either etc) – Section 337BA.</p> <p>Note: <i>the Court may also make any orders it determines appropriate, against TSA and/or TSA personnel and others, if it determines that TSA and/or TSA personnel are aiding, abetting, counselling, procuring, inducing, conspiring with others to cause or threaten detriment or in any other way (directly or indirectly) causing or threatening detriment – Section 337BB.</i></p>	<p>Penalties and offences</p> <p>The following civil penalties and criminal penalties apply in relation to TSA or personnel of TSA taking or threatening to take a reprisal:</p> <ol style="list-style-type: none"> (a) a civil penalty of 100 penalty units (\$33,000 as at February 2025); and/or (b) a criminal penalty of imprisonment for 2 years or 120 penalty units (\$39,600 as at February 2025), or both, <p>– Sections 337BD and 337BE.</p> <p>Civil Action</p> <p>The Court may make any one or more of the following orders in relation to a civil action brought against TSA and/or personnel of TSA for taking a reprisal or threatening to take a reprisal:</p> <ol style="list-style-type: none"> (a) compensation for loss or injury; (b) granting of an injunction; (c) requirement of an apology; (d) reinstatement of the employment or position of a person; (e) exemplary damages; or (f) any other order the Court thinks appropriate, <p>– Sections 337BB.</p>
<u>Corporations Act 2001 (Cth)</u>	<p>A disclosure of information by a person, in relation to TSA, qualifies for protection under the <i>Corporations Act (Cth)</i> (Corporations Act), if:</p> <ol style="list-style-type: none"> 1. the person making the disclosure is: <ol style="list-style-type: none"> (a) an employee; 	<p>1. TSA must not disclose the confidentiality of a discloser</p> <p>A person making a disclosure under the Corporations Act is entitled to protection of their confidential information, including:</p>	<p>Penalties and offences</p> <p>1. Disclosing the confidentiality of a discloser</p>

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	<p>(b) an officer; or</p> <p>(c) a person (or employee of a person or entity) who has supplied goods or services to (whether paid or unpaid),</p> <p>TSA or a related company or organisation of TSA (whichever entity the disclosure relates to);</p> <p>(d) an associate of TSA or a related company or organisation of TSA (whichever entity the disclosure relates to); or</p> <p>(e) a spouse, relative or dependent of one of the above persons, – Section 1317AAA.</p> <p>2. such person makes the disclosure to:</p> <p>(a) a director, company secretary, officer or senior manager;</p> <p>(b) an auditor or a member of the audit team;</p> <p>(c) an actuary; or</p> <p>(d) an authorised person to receive whistleblower disclosures, of TSA or a related company or organisation or TSA (whichever entity the disclosure relates to);</p> <p>(e) the Australian Securities and Investments Commission (ASIC);</p> <p>(f) the Australian Prudential Regulation Authority (APRA); or</p> <p>(g) the lawyer of such person, – Section 1317AA.</p> <p>Note: disclosure to journalists or parliamentarians qualifies for limited protection in certain 'public interest' or 'emergency' disclosure circumstances – Section 1317AAD.</p> <p>3. the person making such a disclosure has reasonable grounds to suspect that the information they are disclosing concerns:</p> <p>(a) misconduct; or</p> <p>(b) an improper state of affairs or circumstances, in relation to TSA or a related entity of TSA or an officer or employee of TSA or a related entity of TSA engaging in conduct that:</p> <p>(c) breaches the Corporations Act;</p> <p>(d) breaches other financial sector laws enforced by ASIC or APRA;</p> <p>(e) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment of a period of 12 month or more; or</p> <p>(f) represents a danger to the public or the financial system, – Section 1317AA.</p>	<p>(a) their identity; and</p> <p>(b) information that is likely to lead to their identification; meaning TSA must not disclose any such information unless such disclosure is to:</p> <p>(c) ASIC;</p> <p>(d) APRA;</p> <p>(e) a Commonwealth, State or Territory authority or another body established by a State or Territory, where required to do so;</p> <p>(f) a member of the Australian Federal Police;</p> <p>(g) to a lawyer for the purposes of obtaining legal advice or representation in relation to the disclosure;</p> <p>(h) a Court or Tribunal, where required to do so; or</p> <p>(i) with the consent of the discloser, – Section 1317AAE.</p> <p>2. TSA must not take any action against disclosers</p> <p>A person making a disclosure under the Corporations Act:</p> <p>(a) is not subject to any civil liability (or criminal or administrative liability);</p> <p>(b) cannot have a contractual or other remedy enforced or exercised against the person (i.e., termination of employment contract or a services agreement etc) making the disclosure on the basis of the disclosure, meaning TSA cannot take such actions against such person – Section 1317AB.</p> <p>3. TSA must not victimise disclosers</p> <p>A person is protected under the Corporations Act from detriment being caused or threatened (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of:</p> <p>(a) a disclosure being made; or</p> <p>(b) a suspicion or belief that a disclosure has been made, may be made, is proposed to be made or could be made, meaning TSA cannot take such actions against a person – Section 1317AC.</p>	<p>The following civil penalties and criminal penalties apply in relation to TSA or personnel of TSA disclosing the confidentiality of a discloser:</p> <p>(a) in relation to TSA, the maximum civil penalty would be the greater of:</p> <p>(i) a civil penalty of 50,000 penalty units (\$16.5 million as at February 2025);</p> <p>(ii) three (3) times the benefit derived/ detriment avoided because of the contravention; or</p> <p>(iii) the lesser of 10% of the annual turnover or 2.5 million penalty units (\$825 million as at February 2025).</p> <p>(b) in relation to the personnel of TSA, the maximum civil penalty would be the greater of:</p> <p>(i) a civil penalty of 5,000 penalty units (\$1.65 million as at February 2025); or</p> <p>(ii) three (3) times the benefit derived/ detriment avoided because of the contravention.</p> <p>(c) in relation to TSA, a criminal penalty of 600 penalty units (\$198,000 as at February 2025).</p> <p>(d) in relation to the personnel of TSA a criminal penalty of imprisonment for six (6) month or 60 penalty units (\$19,800 as at February 2025), or both, – Sections 1311B, 1311C, 1317AAE, 1317AC, 1317G and Schedule 3.</p> <p>2. Causing detriment to a discloser</p> <p>The following civil penalties and criminal penalties apply in relation to TSA or personnel of TSA causing detriment to a discloser:</p> <p>(a) in relation to TSA, the maximum civil penalty would be the greater of:</p> <p>(i) a civil penalty of 50,000 penalty units (\$16.5 million as at February 2025);</p> <p>(ii) three (3) times the benefit derived/ detriment avoided because of the contravention; or</p> <p>(iii) the lesser of 10% of the annual turnover or 2.5 million penalty units (\$825 million as at February 2025).</p> <p>(b) in relation to the personnel of TSA, the maximum civil penalty would be the greater of:</p> <p>(iii) a civil penalty of 5,000 penalty units (\$1.65 million as at February 2025); or</p>

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			<p>(iv) three (3) times the benefit derived/ detriment avoided because of the contravention.</p> <p>(c) in relation to TSA, a criminal penalty of 2400 penalty units (\$792,000 as at February 2025).</p> <p>(d) in relation to the personnel of TSA a criminal penalty of imprisonment for two (2) years or 240 penalty units (\$79,200 as at February 2025), or both,</p> <p>– Sections 1311B, 1311C, 1317AAE, 1317AC, 1317G and Schedule 3.</p> <p>Civil Action</p> <p>The Court may make any one or more of the following orders in relation to a civil action brought against TSA and/or personnel of TSA for causing detriment to a discloser:</p> <p>(a) compensation for loss or injury (to the discloser or any other person);</p> <p>(b) granting of an injunction;</p> <p>(c) requirement of an apology;</p> <p>(d) reinstatement of the employment or position of a person;</p> <p>(e) exemplary damages; or</p> <p>(f) any other order the Court thinks appropriate,</p> <p>– Section 1317AE.</p>
Public Interest Disclosure Act 2013 (Cth)	<p>A disclosure of information by a person, under the <i>Public Interest Disclosure Act 2013 (Cth) (PID Act)</i>, qualifies for protection under the PID Act, if:</p> <ol style="list-style-type: none"> 1. the person making the disclosure is or has been a public official, which includes an individual who is an officer or employee of a contracted service provider for a Commonwealth Contract. If TSA and/or related entities of TSA are contracted service providers for a Commonwealth Contract, this would include officers or employees of TSA and/or related entities of TSA – Sections 26, 30 and 69. 2. such person makes the disclosure: <ol style="list-style-type: none"> (a) in relation to an internal disclosure, to an authorised internal recipient of such disclosure or a supervisor of the discloser – where the information tends to show or the discloser believes on reasonable grounds that the information tends to show disclosable conduct; (b) in relation to an external disclosure, to any person other than a foreign public official – where: <ol style="list-style-type: none"> (i) the information tends to show or the discloser believes on reasonable grounds that the information tends to show disclosable conduct; (ii) on a previous occasion the discloser has made an internal disclosure of such information; and 	<p>1. TSA must not take any action against disclosers</p> <p>A person making a disclosure under the PID Act:</p> <ol style="list-style-type: none"> (a) is not subject to any civil liability (or criminal or administrative liability); (b) cannot have a contractual or other remedy enforced or exercised against the person (i.e., termination of employment contract or a services agreement etc) making the disclosure on the basis of the disclosure, <p>meaning TSA cannot take such actions against such person – Section 10.</p> <p>Note: the same protections apply in relation to witnesses (an individual who provides assistance in relation to a disclosure) – Section 12A.</p> <p>2. Prohibited from releasing information allowing the person to be identified</p> <p>A person making a disclosure under the Corporations Act is entitled to protection of identifying information (i.e., information that may identify the discloser) meaning TSA or</p>	<p>Penalties and offences</p> <p>1. Taking or threatening a reprisal</p> <p>A criminal penalty of imprisonment for 2 years or 120 penalty units (\$39,600 as at February 2025), or both, applies in relation to TSA or personnel of TSA taking or threatening to take a reprisal – Section 19.</p> <p>2. Disclosure or use of identifying information</p> <p>A criminal penalty of imprisonment for six (6) months or 30 penalty units (\$9,900 as at February 2025), or both, applies in relation to TSA or personnel of TSA disclosing or using identifying information of a discloser, without an exception – Section 20.</p> <p>Civil Action</p> <p>The Court may make any one or more of the following orders in relation to a civil action brought against TSA and/or personnel of TSA for taking a reprisal or threatening to take a reprisal:</p> <p>(a) compensation for loss or injury;</p>

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	<p>(iii) any of the following apply:</p> <ul style="list-style-type: none"> (A) a disclosure investigation was conducted and the discloser believes on reasonable ground the investigation was inadequate; (B) a disclosure investigation has not been completed within the required timeframe; (C) the disclosure is not, on balance, contrary to the public interest; (D) no more information is publicly disclosed than is reasonably necessary to identify one (1) or more instances of disclosable conduct; (E) the information does not consist of, or include, intelligence information; or (F) none of the conduct with which the disclosure is concerned relates to an intelligence agency. <p>(c) in relation to an emergency disclosure, to any person other than a foreign public official (i.e., an employee or contractor of a foreign government etc) – where:</p> <ul style="list-style-type: none"> (i) the discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment; (ii) the extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger; (iii) if the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure; (iv) if the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying this disclosure being made before a disclosure investigation of the internal disclosure is completed; and (v) the information does not consist of, or include, intelligence information. <p>(d) to a lawyer – where:</p> <ul style="list-style-type: none"> (i) the disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a public interest disclosure; (ii) if the discloser knew, or ought reasonably to have known, that any of the information has a national security or other protective security classification, the recipient holds the appropriate level of security clearance; and (iii) the information does not consist of, or include, intelligence information, <p>– Section 26(1).</p> <p>Note: a disclosure of information is also a public interest disclosure if the person making the disclosure is or has been a public official, the information disclosed tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct and the disclosure is a</p>	<p>personnel of TSA must not disclose or use any such information obtained in their capacity as a public official, unless such disclosure or use is:</p> <ul style="list-style-type: none"> (a) for the purposes of the PID Act; (b) in connection with the performance of an authorised function of the Ombudsman; (c) in connection with the performance of an authorised function of the Inspector – General of Intelligence and Security; (d) a law of the Commonwealth, or a prescribed law of a State or Territory; (e) with the consent of the discloser; or (f) the identifying information has previously been lawfully published, <p>– Section 20.</p> <p>3. No reprisals or threat of reprisal against disclosers</p> <p>A person is protected under the PID Act from detriment being caused or threatened (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of:</p> <ul style="list-style-type: none"> (a) a disclosure being made; or (b) a suspicion or belief that a disclosure has been made, may be made, is proposed to be made or could be made, <p>meaning TSA cannot take such actions against a person – Section 13.</p> <p>Note: the Court may also make any orders it determines appropriate (including injunctive relief), against TSA and/or TSA personnel and others, if it determines that TSA and/or TSA personnel are aiding, abetting, counselling, procuring, inducing, conspiring with others to cause or threaten detriment or in any other way (directly or indirectly) causing or threatening detriment – Section 15.</p>	<p>(b) granting of an injunction;</p> <p>(c) requirement of an apology;</p> <p>(d) reinstatement of the employment or position of a person;</p> <p>(e) exemplary damages; or</p> <p>(f) any other order the Court thinks appropriate,</p> <p>– Sections 14, 15 and 16.</p>

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	<i>disclosure under the National Anti - Corruption Commission Act 2022 (Cth) – Section 26(1A).</i>		
<u>National Disability Insurance Scheme Act 2013 (Cth)</u>	<p>A disclosure of information by a person, under the <i>National Disability Insurance Scheme Act (Cth) (NDIS Act)</i>, qualifies for protection under the NDIS Act, if:</p> <ol style="list-style-type: none"> 1. the person making a disclosure is: <ol style="list-style-type: none"> (a) an officer or employee of an NDIS provider; (b) a person that supplies goods and services to an NDIS provider; or (c) a person receiving a service from an NDIS provider (or a nominee, family member, carer, advocate or significant other of that person), <p>meaning that if TSA and/or related entities of TSA are NDIS providers, this would include officers or employees of TSA and/or such related entities of TSA, persons supplying goods and services to TSA and/or such related entities of TSA and persons receiving a service (or someone on their behalf) from TSA and/or such related entities of TSA – Section 73ZA(1).</p> 2. such person making the disclosure makes the disclosure to: <ol style="list-style-type: none"> (a) the Commissioner of the NDIS Quality and Safeguards Commission; (b) the National Disability Insurance Agency; or (c) to a key personnel of TSA and/or a related entity of TSA that is an NDIS provider (whichever entity the disclosure relates to), <p>and:</p> <ol style="list-style-type: none"> (d) informs the person to whom the disclosure is made of the discloser's name before making the disclosure; (e) the discloser has reasonable grounds to suspect the information indicates a contravention of the NDIS Act; (f) the disclosure was made in good faith, <p>– Section 73ZA(2).</p> 	<p>1. TSA must not take any action against disclosers</p> <p>A person making a disclosure under the NDIS Act:</p> <ol style="list-style-type: none"> (a) is not subject to any civil liability (or criminal liability); (b) cannot have a contractual or other remedy enforced or exercised against the person (i.e., termination of employment contract or a services agreement etc) making the disclosure on the basis of the disclosure, meaning TSA cannot take such actions against such person – Section 73ZB. <p>2. TSA must not victimise disclosers</p> <p>A person is protected under the NDIS Act from detriment being caused or threatened (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of a disclosure being made, meaning TSA cannot take such actions against a person – Section 73ZC.</p>	<p>Penalties</p> <p>A civil penalty of 500 penalty units (\$165,000 as at February 2025) applies in relation to TSA or personnel of TSA causing or threatening to cause detriment to a person because they have made a disclosure – Section 73ZC.</p> <p>Civil Action</p> <p>The Court may order, in relation to a civil action brought against TSA and/or personnel of TSA for causing or threatening to cause detriment to a person because they have made a disclosure, that TSA and/or personnel of TSA provide such persons with compensation for any damage caused by such detriment or threat of detriment – Section 73ZD.</p>
<u>Aged Care Act 2024 (Cth)</u>	<p>A disclosure of information by a person, under the <i>Aged Care Act 2024 (Cth) (Aged Care Act)</i>, qualifies for protection under the Aged Care Act, if:</p> <ol style="list-style-type: none"> 1. the person making a disclosure makes such disclosure to: <ol style="list-style-type: none"> (a) an Appointed Commissioner or a member of the staff of the Commission; (b) the System Governor, or an official of the Department; (c) a registered aged care provider; (d) a responsible person of a registered aged care provider; (e) an aged care worker of a registered aged care provider; or (f) a police officer; (g) an independent aged care advocate, 	<p>1. TSA must not take any action against disclosers</p> <p>A person making a disclosure under the Aged Care Act:</p> <ol style="list-style-type: none"> (a) is not subject to any civil or administrative liability (or criminal liability) – including disciplinary action; (b) cannot have a contractual or other remedy enforced or exercised against the person (i.e., termination of employment contract or a services agreement etc) making the disclosure on the basis of the disclosure, meaning TSA cannot take such actions against such person – Section 548. <p>2. TSA must not victimise disclosers</p>	<p>Penalties</p> <p>1. Taking or threatening a reprisal</p> <p>A civil penalty of 500 penalty units (\$165,000 as at August 2025) applies in relation to TSA causing or threatening to cause detriment to a person or to another person or to another entity that employs or is otherwise associated with the first person because they have made a disclosure – Section 551.</p> <p>2. Disclosure of identifying information</p> <p>A civil penalty of 30 penalty units (\$9,900 as at August 2025) applies in relation to TSA disclosing the identity of a discloser or information that is likely to lead to the identification of a discloser – Section 550.</p>

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	<p>meaning that if TSA and/or related entities of TSA are registered aged care providers, this would include responsible persons, aged care workers and independent aged care advocates of TSA and/or such related entities of TSA – Section 547.</p> <p>2. the:</p> <ul style="list-style-type: none"> (a) disclosure is made orally or in writing (and whether anonymously or not); and (b) discloser has reasonable grounds to suspect the information indicates that an entity may have contravened the Aged Care Act, <p>– Section 547.</p>	<p>A person is protected under the Aged Care Act from detriment being caused or threatened (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc), to that person or to another person or to another entity that employs or is otherwise associated with the first person, as a result of a disclosure being made, meaning TSA cannot take such actions against such a person.</p> <p>– Section 551.</p> <p>Furthermore, a registered provider must ensure, as far as reasonably practicable, in relation to a person who:</p> <ul style="list-style-type: none"> (a) is an aged care worker or responsible person of such registered provider; and (b) makes a disclosure that qualifies for protection, <p>that it does not cause detriment to that person or threaten to cause detriment to that person, meaning TSA (including TSA's aged care workers, responsible persons and any associated entities of TSA) must take reasonable steps to ensure such actions are not taken against such a person.</p> <p>– Section 553.</p> <p>3. Prohibited from releasing information allowing the person to be identified</p> <p>If a person:</p> <ul style="list-style-type: none"> (a) makes a disclosure, under the Aged Care Act, that qualifies for protection; and (b) requests that they and/or any other individual named in the request remain anonymous, <p>the recipient must take such steps as are reasonable in the circumstances to preserve the anonymity of individuals named in the request for anonymity, meaning that if TSA or a related entity of TSA is a recipient of such a request, it must take reasonable steps to preserve the anonymity of those named in the request.</p> <p>– Section 549.</p> <p>Furthermore, a registered provider must ensure, as far as reasonably practicable, in relation to a person who:</p> <ul style="list-style-type: none"> (a) is an aged care worker or responsible person of such registered provider; and (b) makes a disclosure that qualifies for protection, <p>that it preserves the anonymity of that individual and any other individuals named by that individual in a request for anonymity, meaning that if TSA (including TSA's aged care workers, responsible persons and any associated entities of</p>	<p>Civil Action</p> <p>The Court may order, in relation to a civil action brought against TSA for causing or threatening to cause detriment to a person because they have made a disclosure, that TSA provide such persons with compensation for any damage caused by such detriment or threat of detriment – Section 552.</p>

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		<p>TSA is a recipient of such a request, it must, as far as reasonably practicable, preserve the anonymity of those named in the request.</p> <p>– Section 553.</p> <p>An entity must not disclose:</p> <ul style="list-style-type: none"> (a) the identity of a discloser; or (b) information that is likely to lead to the identification of a discloser, <p>if:</p> <ul style="list-style-type: none"> (c) a discloser makes a disclosure under the Aged Care Act that qualifies for protection; (d) the confidential information is information that the entity obtained directly or indirectly because of the qualifying disclosure; and (e) at least one of the following exceptions allowing disclosure does not exist: <ul style="list-style-type: none"> (i) the disclosure is made to an Appointed Commissioner or a member of the staff of the Commission; (ii) the disclosure is made to the Inspector-General of Aged Care; (iii) the disclosure is made to a police officer; (iv) the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the whistleblower requirements under the Aged Care Act; (v) the disclosure is made with the consent of the discloser; (vi) the disclosure is necessary to lessen or prevent a serious threat to the safety, health or wellbeing of one or more individuals; (vii) the disclosure is made to a court, tribunal or royal commission; (viii) the discloser elects to have the qualifying disclosure managed as a complaint or feedback; (ix) the confidential information is in the public domain before the disclosure and the original disclosure was not in breach of these requirements; or (x) the confidential information disclosed is not the identity of the discloser, is reasonably necessary for the purposes of dealing with any contravention of the Aged Care Act alleged 	

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalties / offences / civil actions
		<p>under a protected disclosure and reasonable steps are taken to reduce the risk that the discloser will be identified as a result of the disclosure of the confidential information, meaning that if TSA or a related entity of TSA must follow such requirements.</p> <p>– Section 550.</p>	
<u>Taxation Administration Act 1953 (Cth)</u>	<p>A disclosure of information by a person, under the <i>Taxation Administration Act 1953 (Cth)</i> (TA Act), qualifies for protection under the TA Act, if:</p> <ol style="list-style-type: none"> the person making a disclosure is: <ol style="list-style-type: none"> an officer; or an employee; of TSA or a related entity of TSA (whichever entity the disclosure relates to); <ol style="list-style-type: none"> an individual who supplied services or good to TSA or a related entity of TSA (whichever entity the disclosure relates to), whether paid or unpaid; or a spouse, child or dependent of any of the above persons, <p>– Section 14ZZU.</p> such person making the disclosure makes the disclosure to: <ol style="list-style-type: none"> the Commissioner of Taxation – where the discloser considers that the information may assist the Commissioner of Taxation to perform his or her functions or duties under a taxation law in relation to TSA or a related entity of TSA (whichever entity the disclosure relates to); the Tax Practitioners Board or the Commissioner of Taxation – where the discloser considers that the information may assist the Tax Practitioners Board to perform its functions or duties; any of the following persons: <ol style="list-style-type: none"> the auditor or member of the audit team conducting the audit of TSA or such related entity of TSA (whichever entity the disclosure relates to); a registered tax agent of BAS agent of TSA or such related entity of TSA (whichever entity the disclosure relates to); a person approved by TSA or such related entity of TSA (whichever entity the disclosure relates to) to receive disclosures; a director of TSA or such related entity of TSA (whichever entity the disclosure relates to); a secretary of TSA or such related entity of TSA (whichever entity the disclosure relates to); a senior manager of TSA or such related entity of TSA (whichever entity the disclosure relates to); or 	<p>1. TSA must not disclose confidential information of a discloser</p> <p>A person making a disclosure under the TA Act is entitled to protection of their confidential information, including:</p> <ol style="list-style-type: none"> their identity; and information that is likely to lead to their identification; <p>meaning TSA must not disclose any such information unless such disclosure is to:</p> <ol style="list-style-type: none"> the Commissioner of Taxation; the Inspector – General of Taxation; the Tax Practitioners Board; the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC); a member of the Australian Federal Police; to a lawyer for the purposes of obtaining legal advice or representation in relation to the disclosure; or with the consent of the discloser, <p>– Section 14ZZW.</p> <p>2. TSA must not take any action against disclosers</p> <p>A person making a disclosure under the TA Act:</p> <ol style="list-style-type: none"> is not subject to any civil liability (or criminal or administrative liability); cannot have a contractual or other remedy enforced or exercised against the person (i.e., termination of employment contract or a services agreement etc) making the disclosure on the basis of the disclosure, <p>meaning TSA cannot take such actions against such person – Section 14ZZX.</p> <p>3. TSA must not victimise disclosers</p> <p>A person is protected under the TA Act from detriment being caused or threatened (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of</p>	<p>Penalties and offences</p> <p>1. Causing or threatening to cause detriment</p> <p>A criminal penalty of imprisonment for 2 years or 240 penalty units (\$79,200 as at February 2025), or both, applies in relation to TSA or personnel of TSA causing or threatening to cause detriment – Section 14ZZY.</p> <p>2. Disclosure of confidential information</p> <p>A criminal penalty of imprisonment for six (6) months or 60 penalty units (\$19,800 as at February 2025), or both, applies in relation to TSA or personnel of TSA disclosing identifying information of a discloser, without an exception – Section 14ZZW.</p> <p>Civil Action</p> <p>The Court may make any one or more of the following orders in relation to a civil action brought against TSA and/or personnel of TSA for causing or threatening to cause detriment:</p> <ol style="list-style-type: none"> compensation for loss or injury; granting of an injunction; requirement of an apology; reinstatement of the employment or position of a person; exemplary damages; or any other order the Court thinks appropriate, <p>– Section 14ZZA.</p>

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalties / offences / civil actions
	<p>(vii) an employee or officer of TSA or such related entity of TSA who has functions or duties that relate to the tax affairs of TSA or such related entity of TSA (whichever entity the disclosure relates to),</p> <p>where the discloser has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of TSA or such related entity of TSA (whichever entity the disclosure relates to) and the information may assist the recipient of such information to perform functions or duties in relation to the tax affairs of TSA or such related entity of TSA (whichever entity the disclosure relates to);</p> <p>(d) to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the disclosure requirements under the TA Act; or</p> <p>(e) to a medical practitioner or psychologist for the purpose of obtaining medical or psychiatric care, treatment or counselling (including psychological counselling),</p> <p>– Section 14ZZV.</p>	<p>discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of:</p> <p>(a) a disclosure being made; or</p> <p>(b) a suspicion or belief that a disclosure has been made, may be made, is proposed to be made or could be made, meaning TSA cannot take such actions against a person – Section 14ZZY.</p> <p>Note: <i>the Court may also make any orders it determines appropriate, against TSA and/or TSA personnel and others, if it determines that TSA and/or TSA personnel are aiding, abetting, counselling, procuring, inducing, conspiring with others to cause or threaten detriment or in any other way (directly or indirectly) causing or threatening detriment – Section 14ZZ(2).</i></p>	
Australian Charities and Not-for-profits Commission Act 2012 (Cth) Australian Charities and Not-for-profits Commission Regulations 2022 (Cth)	<p>There are no relevant whistleblower requirements under the:</p> <p>(a) <i>Australian Charities and Not-for-profits Commission Act 2012 (Cth); or</i></p> <p>(b) <i>the Australian Charities and Not-for-profits Commission Regulations 2022 (Cth),</i></p> <p>however, the ACNC recommends that charities implement a whistleblower policy – this is something TSA and any related entities of TSA that are registered charities with the ACNC should strongly consider implementing.</p>		

2 The Australian Capital Territory

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<u>Public Interest Disclosures Act 2012 (ACT)</u>	TSA and its personnel do not fall under the requirements of the <i>Public Interest Disclosures Act 2012 (ACT)</i> , as at this time TSA is not a 'public sector entity' nor are personnel of TSA 'public officials', and therefore TSA has no whistleblower obligations in the Australian Capital Territory.		

3 New South Wales

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<u>Public Interest Disclosures Act 2022 (NSW)</u>	TSA and its personnel do not fall under the requirements of the <i>Public Interest Disclosures Act 2022 (NSW)</i> , as at this time TSA is not an 'agency' nor are personnel of TSA 'public officials', and therefore TSA has no whistleblower obligations in New South Wales.		

4 Northern Territory

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<i>Public Interest Disclosures Act 2008 (NT)</i>	The <i>Public Interest Disclosures Act 2008 (NT)</i> has been repealed and therefore TSA has no whistleblower obligations in the Northern Territory.		

5 Tasmania

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<u>Public Interest Disclosures Act 2002 (Tas)</u>	TSA and its personnel do not fall under the requirements of the <i>Public Interest Disclosures Act 2002 (Tas)</i> , as at this time TSA is not a 'public body' nor are personnel of TSA 'public officers', and therefore TSA has no whistleblower obligations in Tasmania.		

6 Queensland

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<u>Public Interest Disclosure Act 2010 (Qld)</u>	<p>Under the <i>Public Interest Disclosure Act 2010 (Qld) (QLD Act)</i>, any person who has information about:</p> <ul style="list-style-type: none"> (a) a substantial and specific danger to the health or safety of a person with a disability; (b) the commission of certain offences or contravention of certain conditions that is or would be a substantial and specific danger to the environment; or (c) the conduct of another purpose that could be considered a reprisal under the QLD Act, <p>may make a disclosure that qualifies for protection, to a Public Sector Entity (of which TSA and its related entities are not at this time) or a member of the Legislative Assembly of QLD, following any reasonable procedure for making a public interest disclosure set by such Public Sector Entity or member of the Legislative Assembly of QLD. A disclosure to a Public Sector Entity may include disclosure to:</p> <ul style="list-style-type: none"> (d) the CEO of such Public Sector Entity; (e) the Minister, if such Public Sector Entity is a Department; (f) a member of the governing body of the Public Sector Entity, if it has a governing body; or (g) an officer the Public Sector Entity who has the function of receiving or taking action on the type of information being disclosed, <p>– Section 17.</p> <p>Note: disclosure to journalists, in certain circumstances (i.e., where a public interest disclosure has previously been made and not investigated, no action was taken or the discloser was not notified of the investigation or action taken), may be considered a public interest disclosure – Section 20.</p>	<p>1. TSA must not take any action against disclosers</p> <p>A person making a disclosure under the QLD Act is not subject to any civil liability (or criminal or administrative liability) including disciplinary action, for making a disclosure, meaning TSA and personnel of TSA cannot take such actions against such person – Section 36.</p> <p>Note: a person making a disclosure under the QLD Act is also protected under any resulting defamation proceedings – Section 38.</p> <p>2. No reprisals or threat of reprisal against disclosers</p> <p>A person is protected under the QLD Act from detriment being caused, attempted or conspired to cause (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of:</p> <ul style="list-style-type: none"> (a) a disclosure being made or intending to be made; or (b) involvement or intending to be involved in a proceeding under the QLD Act, <p>meaning TSA and personnel of TSA cannot take such actions against such person – Section 40.</p> <p>Note: there are requirements in the QLD Act in relation to preserving the confidentiality of confidential information gained by being involved in the administration of the QLD Act, however, TSA and TSA personnel would not receive such confidential information by virtue of being involved in the administration of the QLD Act so we have not included this obligation – Section 20.</p>	<p>Penalties and offences</p> <p>A criminal penalty of imprisonment for two (2) years or 167 penalty units (\$26,937.10 as at February 2025), or both, applies in relation to personnel of TSA taking reprisal against a discloser – Section 41.</p> <p>Civil Action</p> <p>The Court may provide any appropriate remedy that may be granted for the tort of reprisal, if civil action is brought against personnel of TSA for taking reprisal, including exemplary damages – Section 42.</p>

7 South Australia

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<u>Public Interest Disclosures Act 2018 (SA)</u>	<p>Under the <i>Public Interest Disclosures Act 2018 (SA) (SA Act)</i>, any person who makes an appropriate disclosure of environmental and health information (information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public) is protected from liability in relation to such disclosure. The disclosure must be made to a relevant authority (of which TSA and its related entities are not at this time – a relevant authority includes, depending on the type of disclosure, the Ombudsman, the Environment Protection Authority, the Auditor-General, a member of the police force, the Judicial Conduct Commissioner, the Presiding Officer of the Parliament etc) and the person making this disclosure must:</p> <ul style="list-style-type: none"> (a) on reasonable grounds believe that the information they are disclosing is true; or (b) if not in a position to form a belief on reasonable grounds about the truth of the information, believe on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated, <p>– Section 5.</p> <p>Note: disclosure to journalists or Members of Parliament (other than a Minister), in certain circumstances (i.e., where a public interest disclosure has previously been made, the person has not received the necessary notification of such disclosure being acted upon and they reasonably believe the information they are disclosing is true), may be considered an appropriate disclosure – Section 6.</p>	<ol style="list-style-type: none"> 1. TSA must not take any action against disclosers A person making a disclosure under the SA Act is not subject to any liability (including civil, criminal or administrative liability) for making a disclosure, meaning TSA and personnel of TSA cannot take such actions against such person – Section 5. 2. Identity of a discloser must be kept confidential A person who knows that a disclosure has been made, must not, without the consent of the informant, knowingly divulge the identity of the informant, meaning TSA and the personnel of TSA cannot take such actions against such person – Section 8. 3. A discloser must not be victimised for making a disclosure A person is protected under the SA Act from detriment being caused (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of a disclosure being made or intending to be made, meaning TSA and personnel of TSA cannot take such actions against such person – Section 9. 4. A discloser must not be prevented or hindered from making a disclosure A person must not: <ul style="list-style-type: none"> (a) prevent another person from making an appropriate disclosure of public interest information under the SA Act; or (b) hinder or obstruct another person in making such a disclosure, <p>– Section 11.</p> 	<p>Penalties and offences A criminal penalty of imprisonment for two (2) years or \$20,000 applies in relation to:</p> <ul style="list-style-type: none"> (a) failing to keep the identity of a discloser confidential; (b) causing detriment to a discloser on the basis of the disclosure; or (c) preventing, hindering or obstructing another person in making an appropriate disclosure, <p>– Sections 8, 9 and 11.</p> <p>Civil Action The Court may provide any appropriate remedy that may be granted for the tort of victimisation, if civil action is brought against personnel of TSA for victimising a discloser (alternatively an act of victimisation may be dealt with as if it were an act of victimisation under the <i>Equal Opportunity Act 1984 (SA)</i>) – Section 9.</p>

8 Victoria

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<u>Public Interests Disclosures Act 2012 (Vic)</u>	<p>Under the <i>Public Interest Disclosures Act 2012 (Vic)</i> (VIC Act), any person who has information that shows or tends to show or that the person reasonably believes shows or tends to show:</p> <ul style="list-style-type: none"> (a) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or (b) a public officer or public body has taken, is taking or proposes to take detrimental action against a person as a result of a disclosure, <p>may make a disclosure that qualifies for protection, in accordance with any procedures required by any entity to which the disclosure must be made, to:</p> <ul style="list-style-type: none"> (c) the Independent Broad-based Anti-corruption Commission; (d) the Ombudsman; or (e) the Victorian Inspectorate, <p>– Sections 9, 12, 13.</p>	<ol style="list-style-type: none"> 1. TSA must not take any action against disclosers A person making a disclosure under the VIC Act is not subject to any civil liability (or criminal or administrative liability), including disciplinary action, for making a disclosure, meaning TSA and personnel of TSA cannot take such actions against such person – Section 39. Note: <i>a person making a disclosure under the VIC Act is also protected under any resulting defamation proceedings – Section 41.</i> 2. No reprisals or threat of reprisal against disclosers A person is protected under the VIC Act from detriment being caused, threatened, incited or permitted (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of: (a) a disclosure being made or intending to be made; or (b) involvement or intending to cooperate with an investigation of a disclosure, meaning TSA and personnel of TSA cannot take such actions against such person – Section 45. 3. No disclosure of the identity of a discloser A person or body must not disclose information (that has not already been made public) likely to lead to the identification of person who has made a disclosure: (a) a disclosure being made or intending to be made; or (b) involvement or intending to cooperate with an investigation of a disclosure, unless to: (c) an Australian legal practitioner to obtain legal advice; (d) an interpreter for the purposes of interpretation; (e) a parent or guardian of a person who is under 18 years of age and must comply with the VIC Act; (f) to an independent person, for the purpose of enabling a person who is illiterate or has a mental or physical impairment that prevents the person from understanding an obligation of the VIC Act, to comply with the VIC Act; (g) to any of the following for the purpose of assisting the person who made the disclosure to seek advice or support in relation to the disclosure: (i) a registered health practitioner; 	<p>Penalties and offences</p> <ol style="list-style-type: none"> 1. Reprisal against a discloser A criminal penalty for natural persons of imprisonment for two (2) years or 240 penalty units (\$47,421.60 as at February 2025), or both, applies in relation to personnel of TSA taking reprisal against a discloser – Section 45. 2. Disclosure of identify of a discloser (a) A criminal penalty for natural persons of imprisonment for twelve (12) months or 120 penalty units (\$23,710.80 as at February 2025), or both, applies in relation to personnel of TSA disclosing the identity of a discloser – Section 53. (b) A criminal penalty for body corporates of 600 penalty units (\$118,554 as at February 2025) applies in relation to TSA ore related entities of TSA disclosing the identity of a discloser – Section 53. <p>Civil Action The Court may provide any appropriate remedy that may be granted for the tort of reprisal, if civil action is brought against personnel of TSA for taking reprisal, including exemplary damages. The Court may also make an order granting an injunction in relation to actions that may cause detriment – Sections 47 and 49.</p>

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
		<ul style="list-style-type: none"> (ii) a trade union of which the discloser is a member; or (iii) an employee assistance program; (h) the Victorian WorkCover Authority to assist with a compensation claim; or (i) for the purpose of an application to the Fair Work Commission, <p>meaning TSA and personnel of TSA cannot take such actions against such person – Sections 53 and 54.</p>	

9 Western Australia

Relevant legislative instrument	Criteria for whistleblower protection	Obligations of TSA	Penalty / offence / action
<u>Public Interest Disclosures Act 2003 (WA)</u>	<p>Under the <i>Public Interest Disclosures Act 2003 (WA) (WA Act)</i>, any person may make a disclosure of public interest information, that qualifies for protection under the WA Act, to a proper authority (i.e., depending on the nature of the disclosure, to a police officer, to the Corruption and Crime Commission, the Parliamentary Commissioner, the Chief Justice, Presiding Officer of Parliament etc), so long as the person making the appropriate disclosure:</p> <p>(a) believes on reasonable grounds that the information is true; or (b) if not in a position to form a belief on reasonable grounds about the truth of the information, believe on reasonable grounds that the information may be true, – Section 5.</p> <p>Note: disclosure to journalists, in certain circumstances (i.e., where a public interest disclosure has previously been made and the disclosure has not been investigated in the required timeframe or no action has been taken as a result of an investigation), may be considered a disclosure that qualifies for protection – Section 7A.</p>	<ol style="list-style-type: none"> TSA must not take any action against disclosers A person making a disclosure under the WA Act is not subject to any civil liability (or criminal or administrative liability), including disciplinary action, for making a disclosure, meaning TSA and personnel of TSA cannot take such actions against such person – Section 13. A discloser must not be victimised for making a disclosure A person is protected under the WA Act from detriment being caused or threatened (i.e., dismissal from employment, the threat of dismissal, discrimination or the threat of discrimination, intimidation, damage to reputation or the threat of damage to reputation etc) as a result of a disclosure being made or intending to be made, meaning TSA and personnel of TSA cannot take such actions against such person – Section 14. No disclosure of the identity of a discloser A person must not disclose information likely to lead to the identification of person who has made a disclosure unless the person making the disclosure consents to such disclosure or they are required to do so under the law (i.e., by order of the court, having regard to the rules of natural justice, as part of the investigation of the disclosure etc) – Section 16. 	<p>Penalties and offences</p> <ol style="list-style-type: none"> Reprisal against a discloser A criminal penalty for natural persons, of imprisonment for two (2) years or \$24,000, applies in relation to personnel of TSA taking reprisal against a discloser or inciting someone else to take such reprisal – Section 14. Disclosure of identify of a discloser A criminal penalty for natural persons, of imprisonment for two (2) years or \$24,000, applies in relation to personnel of TSA disclosing the identity of a discloser – Section 16. <p>Civil Action The Court may provide any appropriate remedy that may be granted for the tort of victimisation, if civil action is brought against personnel of TSA for taking reprisal, including exemplary damages. The Court may also make an order granting an injunction in relation to actions that may cause detriment (alternatively an act of victimisation may be dealt with as if it were an act of victimisation under the <i>Equal Opportunity Act 1984 (WA)</i>) – Sections 15 and 15A.</p>

Annexure A

Legislative Extracts

Fair Work (Registered Organisations) Act 2009 (Cth)

337A 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 one of the following:
 - (i) an officer or former officer of an organisation, or of a branch of an organisation;
 - (ii) an employee or former employee of an organisation, or of a branch of an organisation;
 - (iii) a member or former member of an organisation, or of a branch of an organisation;
 - (iv) a person who has or had a contract for the supply of services or goods to, or any other transaction with, an organisation or a branch of an organisation;
 - (v) a person who has or had a contract for the supply of services or goods to, or any other transaction with, an officer or employee of an organisation or of a branch of an organisation who is or was acting on behalf of the organisation or branch;
 - (vi) an officer, former officer, employee or former employee of a person referred to in subparagraph (iv) or (v); and
 - (b) the disclosure is made to one of the following:
 - (i) the General Manager;
 - (ii) an FWC Member or a member of the staff of the FWC;
 - (iii) an administrator of a scheme determined under subsection 323B(1), or a person authorised by an administrator under paragraph 323HA(3)(b);
 - (v) a member of the staff of the Office of the Fair Work Ombudsman (within the meaning of the Fair Work Act); and
 - (c) the discloser has reasonable grounds to suspect that the information indicates one or more instances of disclosable conduct by:
 - (i) the organisation or a branch of the organisation; or
 - (ii) an officer or employee of the organisation or of a branch of the organisation.
- (2) A disclosure is taken to have been made by a person mentioned in paragraph (1)(a) (the *discloser*) to a person mentioned in paragraph (1)(b) (the *official*) if the disclosure is made to the official by a lawyer on the discloser's behalf.

337B 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.

Note: This subsection does not provide that the person is not 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 (see subsection (3)) 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) For the purpose of paragraph (2)(a), ***qualified privilege***, in respect of the disclosure, means that the person:
 - (a) has qualified privilege in proceedings for defamation; and

(b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person; in respect of the disclosure.

(4) For the purpose of paragraph (3)(b), **malice** includes ill will to the person concerned or any other improper motive.

(5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

337BA What constitutes taking a reprisal

(1) A person (the **first person**) **takes a reprisal** against another person (the **second person**) if:

- (a) the first person causes (by act or omission) any detriment to the second person; and
- (b) when the act or omission occurs, the first person:
 - (i) 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; or
 - (ii) should have known 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.

(2) In this Part, **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 detriment;
- (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.

(3) Despite subsection (1), a person does not take a reprisal against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

337BB Civil remedies

(1) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person mentioned in subsection (4) (the **applicant**), that another person (the **respondent**) took or threatened to take, or is taking or threatening to take, a reprisal against a person (the **target**), the Court may make any one or more of the following orders:

- (a) an order requiring the respondent to compensate the target for loss, damage or injury as a result of the reprisal or threat;
- (b) an order granting an injunction, on such terms as the Court thinks appropriate, to prevent, stop or remedy the effects of the reprisal or threat;
- (c) an order requiring the respondent to apologise to the target for taking, or threatening to take, the reprisal;
- (d) if the target is or was employed in a particular position with the respondent and the reprisal wholly or partly consists, or consisted, of the respondent terminating, or purporting to terminate, the target's employment—an order that the target be reinstated in that position or a position at a comparable level;
- (e) if the Court thinks it is appropriate—an order requiring the respondent to pay exemplary damages to the target;
- (f) any other order the Court thinks appropriate.

(2) However, the Court must not make an order under subsection (1) if the respondent satisfies the Court that the belief or suspicion mentioned in subparagraph 337BA(1)(b)(i) is not any part of the reason for taking the reprisal.

- (3) Notwithstanding subsection (2), the Court may make an order under subsection (1) if satisfied that:
 - (a) the target made, may have made, proposed to make or could have made a disclosure that qualifies for protection under this Part; and
 - (b) the respondent was under a duty to prevent, refrain from, or take reasonable steps to ensure other persons under the respondent's control prevented or refrained from, any act or omission likely to result in detriment to the target; and
 - (c) the respondent failed in part or whole to fulfil that duty.
- (4) Any of the following persons may make an application under subsection (1):
 - (a) the target;
 - (c) the General Manager;
 - (e) the Fair Work Ombudsman (within the meaning of the Fair Work Act).
- (5) If the reprisal wholly or partly consists, or consisted, of the respondent terminating, or purporting to terminate, the target's employment, the Court must, in making an order mentioned in paragraph (1)(a), consider the period, if any, the target is likely to be without employment as a result of the reprisal. This subsection does not limit any other matter the Court may consider.
- (6) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) has power under subsection (1) to make an order against a respondent in relation to conduct that constituted or constitutes taking or threatening to take a reprisal against a target, the Court may make any other orders that it thinks appropriate against any other person who has:
 - (a) aided, abetted, counselled or procured the conduct; or
 - (b) induced the conduct, whether through threats or promises or otherwise; or
 - (c) failed to fulfil a duty to prevent, refrain from, or take reasonable steps to ensure other persons under the person's control prevented or refrained from, the conduct; or
 - (d) been in any way (directly or indirectly) knowingly concerned in or a party to the conduct; or
 - (e) conspired with others to effect the conduct.

337BD Civil penalties

Taking a reprisal

- (1) A person (the **first person**) must not take a reprisal against another person if the first person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for taking the reprisal.

Civil penalty: 100 penalty units.

- (2) In proceedings for a contravention of subsection (1), it is not necessary to prove that a person made, may have made, proposed to make or could have made a disclosure that qualifies for protection under this Part.

Threatening to take a reprisal

- (3) A person (the **first person**) must not make a threat to another person (the **second person**) to take a reprisal against the second person or a third person if:
 - (a) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to the second person fearing that the threat will be carried out; and
 - (b) the first person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for making the threat.

Civil penalty: 100 penalty units.

- (4) For the purposes of subsection (3), the threat may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (5) In proceedings for a contravention of subsection (3), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

337BE Criminal offences

Taking a reprisal

- (1) A person commits an offence if:
 - (a) the person takes a reprisal against another person; and
 - (b) the person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for taking the reprisal.

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

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that a person made, may have made, proposed to make or could have made a disclosure that qualifies for protection under this Part.

Threatening to take a reprisal

- (3) A person (the **first person**) commits an offence if:
 - (a) the first person makes a threat to another person (the **second person**) to take a reprisal against the second person or 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 the second person fearing that the threat will be carried out; and
 - (c) the first person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for making the threat.

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

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

Corporations Act 2001 (Cth)

1311B Penalty applicable to an offence committed by an individual

- (1) The **penalty applicable** to an offence committed by an individual is:
 - (a) for an offence for which a fine is the only penalty specified—the fine specified; and
 - (b) for an offence for which a term of imprisonment is the only penalty specified—either the term of imprisonment, the fine worked out under this section, or both.
- (2) If:
 - (a) a term of imprisonment is the only penalty specified for an offence; and
 - (b) the term of imprisonment is less than 10 years;
the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula.
- (3) The **individual fine formula** is:

Term of imprisonment, \times 10
expressed in months

- (4) If:
 - (a) a term of imprisonment is the only penalty specified for an offence; and
 - (b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greater of:

 - (c) 4,500 penalty units; and
 - (d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3.
- (5) This section applies in relation to an offence committed by an individual unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the **penalty applicable** is the penalty specified for the offence.

Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:

- (a) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;
- (b) a regulation made under paragraph 1364(2)(w) prescribing a penalty for an individual for a contravention of the regulations.

1311C Penalty applicable to an offence committed by a body corporate

- (1) The **penalty applicable** to an offence committed by a body corporate is:
 - (a) for an offence for which a fine is the only penalty specified—the fine specified multiplied by 10; and
 - (b) for an offence for which a term of imprisonment is the only penalty specified—the fine worked out under this section.
- (2) If:
 - (a) a term of imprisonment is the only penalty specified for an offence; and
 - (b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula, multiplied by 10.

(3) If:

- (a) a term of imprisonment is the only penalty specified for an offence; and
- (b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greatest of:

- (c) 45,000 penalty units; and
- (d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3; and
- (e) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(4) This section applies in relation to an offence committed by a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the **penalty applicable** is the penalty specified for the offence.

Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:

- (a) subsection 1211B(3), which specifies a penalty for a body corporate;
- (b) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;
- (c) a regulation made under paragraph 1364(2)(w) prescribing a penalty for a body corporate for a contravention of the regulations.

1317AA Disclosures qualifying for protection under this Part

Disclosure to ASIC, APRA or prescribed body

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

- (a) the discloser is an eligible whistleblower in relation to a regulated entity; and
- (b) the disclosure is made to any of the following:
 - (i) ASIC;
 - (ii) APRA;
 - (iii) a Commonwealth authority prescribed for the purposes of this subparagraph in relation to the regulated entity; and
- (c) subsection (4) or (5) applies to the disclosure.

Note: Section 1317AAD (public interest disclosure and emergency disclosure) and paragraph 1317AB(1)(c) (protection from self-incrimination etc.) may apply to a disclosure covered by this subsection.

Disclosure to eligible recipients

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

- (a) the discloser is an eligible whistleblower in relation to a regulated entity; and
- (b) the disclosure is made to an eligible recipient in relation to the regulated entity; and
- (c) subsection (4) or (5) applies to the disclosure.

Disclosure to legal practitioner

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

Disclosable matters

(4) This subsection applies to 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 regulated entity; or
- (b) if the regulated entity is a body corporate—a related body corporate of the regulated entity.

(5) Without limiting subsection (4), this subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information indicates that any of the following:

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

has engaged in conduct that:

- (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 Accountability Regime Act 2023*;
- (v) the *Financial Sector (Collection of Data) Act 2001*;
- (vi) the *Insurance Act 1973*;
- (vii) the *Life Insurance Act 1995*;
- (viii) the *National Consumer Credit Protection Act 2009*;
- (ix) the *Superannuation Industry (Supervision) Act 1993*;

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

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

1317AAA Meaning of *eligible whistleblower*

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

- (a) an officer of the regulated entity;
- (b) an employee of the regulated entity;
- (c) an individual who supplies services or goods to the regulated entity (whether paid or unpaid);
- (d) an employee of a person that supplies services or goods to the regulated entity (whether paid or unpaid);
- (e) an individual who is an associate of the regulated entity;
- (f) for a regulated entity that is a superannuation entity:
 - (i) 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; or
 - (ii) an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity; or

- (iii) an employee of an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii); or
- (iv) an individual who supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid); or
- (v) an employee of a person that supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid);
- (g) a relative 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;
- (i) an individual prescribed by the regulations for the purposes of this paragraph in relation to the regulated entity.

1317AAD Public interest disclosure and emergency disclosure

- (1) A disclosure of information (the **public interest disclosure**) by an individual (the **discloser**) qualifies for protection under this Part if:
 - (a) the discloser has previously made a disclosure of that information (the **previous disclosure**) that qualifies for protection under this Part under subsection 1317AA(1); and
 - (b) at least 90 days have passed since the previous disclosure was made; and
 - (c) the discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related; and
 - (d) the discloser has reasonable grounds to believe that making a further disclosure of the information in accordance with this subsection would be in the public interest; and
 - (e) after the end of the period referred to in paragraph (b), the discloser gave the body to which the previous disclosure was made a written notification that:
 - (i) includes sufficient information to identify the previous disclosure; and
 - (ii) states that the discloser intends to make a public interest disclosure; and
 - (f) the public interest disclosure is made to:
 - (i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
 - (ii) a journalist; and
 - (g) the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient referred to in paragraph (f) of the misconduct or the improper state of affairs or circumstances referred to in subsection 1317AA(4) or the conduct referred to in subsection 1317AA(5), as the case may be.
- (2) A disclosure of information (the **emergency disclosure**) by an individual (the **discloser**) qualifies for protection under this Part if:
 - (a) the discloser has previously made a disclosure of that information (the **previous disclosure**) that qualifies for protection under this Part under subsection 1317AA(1); and
 - (b) the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and
 - (c) the discloser gives the body to which the previous disclosure was made a written notification that:
 - (i) includes sufficient information to identify the previous disclosure; and
 - (ii) states that the discloser intends to make an emergency disclosure; and
 - (d) the emergency disclosure is made to:
 - (i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
 - (ii) a journalist; and
 - (e) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient referred to in paragraph (d) of the substantial and imminent danger.

(3) In this section:

journalist means a person who is working in a professional capacity as a journalist for any of the following:

- (a) a newspaper or magazine;
- (b) a radio or television broadcasting service;
- (c) an electronic service (including a service provided through the internet) that:
 - (i) is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); and
 - (ii) is similar to a newspaper, magazine or radio or television broadcast.

1317AAE 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
- (d) the disclosure referred to in paragraph (b) is not authorised under subsection (2) or (3).

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 legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or
- (e) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or
- (f) is made with the consent of the discloser.

(3) Without limiting subsection (2), a disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

- (a) is made by ASIC, APRA or a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); and
- (b) is made to any of the following for the purpose of assisting it in the performance of its functions or duties:
 - (i) a Commonwealth authority;
 - (ii) an authority of a State or Territory;
 - (iii) another body (whether incorporated or not) that is established or continued in existence by or under a law of a State or Territory.

(4) Subsection (1) does not apply if:

- (a) the disclosure referred to in paragraph (1)(b):
 - (i) is not of the identity of the discloser; and
 - (ii) is reasonably necessary for the purposes of investigating a matter referred to in subsection 1317AA(4) or (5) to which the qualifying disclosure relates; and

(b) the first person takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure referred to in paragraph (1)(b).

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

1317AB 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, criminal or administrative liability (including disciplinary action) 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 qualifies for protection under this Part under subsection 1317AA(1) or section 1317AAD—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, criminal or administrative 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.

1317AC Victimisation prohibited

Actually causing detriment to another person

(1) A person (the **first person**) contravenes this subsection 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.

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.

Threatening to cause detriment to another person

(2) A person (the **first person**) contravenes this subsection 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.

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.

Officers and employees involved in contravention

(3) If a company contravenes subsection (1) or (2), any officer or employee of the company who is involved in that contravention contravenes this subsection.

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.

Threats

(4) For the purposes of subsection (2), a threat may be:

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

(5) In a prosecution for an offence against subsection (2) or proceedings in relation to a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

1317G Pecuniary penalty orders

Court may order person to pay pecuniary penalty

(1) A Court may order a person to pay to the Commonwealth a pecuniary penalty in relation to the contravention of a civil penalty provision if:

- (a) a declaration of contravention of the civil penalty provision by the person has been made under section 1317E; and
- (b) if the contravention is of a corporation/scheme civil penalty provision, the contravention:
 - (i) materially prejudices the interests of the corporation, scheme or fund, or its members; or
 - (ii) materially prejudices the corporation's ability to pay its creditors; or
 - (iii) is serious; and
- (c) if the contravention is of a financial services civil penalty provision (other than one excluded by subsection (1A)), the contravention:
 - (i) materially prejudices the interests of acquirers or disposers of the relevant financial products; or
 - (ii) materially prejudices the issuer of the relevant financial products or, if the issuer is a corporation, scheme or fund, the members of that corporation, scheme or fund; or
 - (iii) is serious; and
- (d) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction), the contravention:
 - (i) materially prejudices the interests of the passport fund or its members; or
 - (ii) is serious.

The order is a **pecuniary penalty order**.

(1A) The civil penalty provisions in the following table are excluded by this subsection.

Excluded civil penalty provisions of Part 7.7A

Item	Provision	Matter
1	Subsections 961K(1) and (2)	Financial services licensee responsible for breach of certain best interests duties
2	Section 961L	Financial services licensee to ensure compliance with certain best interests duties
3	Subsection 961Q(1)	Authorised representative responsible for breach of certain best interests duties
10	Subsections 963E(1) and (2)	Financial services licensee must not accept conflicted remuneration
11	Section 963F	Financial services licensee must ensure representatives do not accept conflicted remuneration
12	Subsection 963G(1)	Authorised representative must not accept conflicted remuneration
13	Section 963J	Employer must not pay employees conflicted remuneration
14	Section 963K	Financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative
15	Section 963P	Person covered by section 963M must pay amount etc. in accordance with regulations
16	Subsection 964A(1)	Platform operator must not accept volume-based shelf-space fees
17	Subsections 964D(1) and (2)	Financial services licensee must not charge asset-based fees on borrowed amounts
18	Subsection 964E(1)	Authorised representative must not charge asset-based fees on borrowed amounts
19	Section 965	Anti-avoidance of Part 7.7A provisions

Maximum pecuniary penalty

(2) The pecuniary penalty must not exceed the pecuniary penalty applicable to the contravention of the civil penalty provision.

Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual

(3) The **pecuniary penalty applicable** to the contravention of a civil penalty provision by an individual is the greater of:

- 5,000 penalty units; and
- if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.

Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate

(4) The **pecuniary penalty applicable** to the contravention of a civil penalty provision by a body corporate is the greatest of:

- 50,000 penalty units; and
- if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and

(c) either:

- (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
- (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

Contrary intention in relation to pecuniary penalty applicable

(5) Subsections (3) and (4) apply in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the pecuniary penalty applicable to the contravention. In that case, the **pecuniary penalty applicable** is the penalty specified for the civil penalty provision.

Determining pecuniary penalty

(6) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:

- (a) the nature and extent of the contravention; and
- (b) the nature and extent of any loss or damage suffered because of the contravention; and
- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by a court (including a court in foreign country) to have engaged in similar conduct; and
- (f) in the case of a contravention by the trustee of a registrable superannuation entity—the impact that the penalty under consideration would have on the beneficiaries of the entity.

Schedule 3—Penalties

Note: See sections 1311 to 1311E.

Penalties*	
Provision	Penalty
Subsection 1317AAE(1)	6 months imprisonment
Subsections 1317AC(1), (2) and (3)	2 years imprisonment

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*Only relevant penalties in relation to whistleblower requirements have been included for the purposes of the above table.

Public Interest Disclosure Act 2013 (Cth)

10 Protection of disclosers

- (1) If an individual makes a public interest disclosure:
 - (a) the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and
 - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure.
- (2) Without limiting subsection (1):
 - (a) the individual has absolute privilege in proceedings for defamation in respect of the public interest disclosure; and
 - (b) a contract to which the individual is a party must not be terminated on the basis that the public interest disclosure constitutes a breach of the contract.

12A Witnesses—immunity from liability etc.

Scope

- (1) This section applies to an individual (the **witness**) who provides assistance in relation to a public interest disclosure (other than the individual who makes the disclosure), subject to section 12B.

*Meaning of **provides assistance***

- (2) A person **provides assistance** in relation to a public interest disclosure if the person gives information or produces a document or other thing, or answers a question, that the person considers on reasonable grounds to be relevant to:
 - (a) the making of a decision in relation to the allocation of a disclosure under section 43; or
 - (b) a disclosure investigation or a proposed disclosure investigation; or
 - (c) a review or proposed review by the Ombudsman or the IGIS, under subsection 55(3), about the handling of a disclosure.

Immunity from civil, criminal or administrative action

- (3) The witness is not subject to any civil, criminal or administrative liability (including disciplinary action) because of the assistance provided.

Immunity from enforcement of remedies or rights

- (4) No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the witness on the basis of the assistance provided.

Absolute privilege

- (5) Without limiting subsections (3) and (4):
 - (a) the witness has absolute privilege in proceedings for defamation in respect of the assistance provided; and
 - (b) a contract to which the witness is a party must not be terminated on the basis that the assistance provided constitutes a breach of the contract.

13 What constitutes taking a reprisal

- (1) A person (the **first person**) **takes a reprisal** against another person (the **second person**) if:

- (a) the first person engages in conduct that:
 - (i) results in detriment to the second person; or
 - (ii) consists of, or results in, a threat to cause detriment to the second person; and
- (b) when the conduct is engaged in, the first person believes or suspects that the second person, or any other person:
 - (i) has made a public interest disclosure; or
 - (ii) may have made a public interest disclosure; or
 - (iii) proposes to make a public interest disclosure; or
 - (iv) could make a public interest disclosure; and
- (c) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Examples: Persons against whom a reprisal may be taken within the meaning of this section in relation to the making of a public interest disclosure by any person include the following:

- (a) the person who made the disclosure;
- (b) a witness in relation to the disclosure, within the meaning of section 12A.

(2) **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;
- (j) any other damage to a person.

(3) Despite subsection (1), a person does not take a reprisal against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

Note 1: A person may be liable in a civil action under section 14, 15 or 16 for taking a reprisal against another person.

Note 2: If a person engages in conduct that, in substance, constitutes taking a reprisal against another person, the person may be guilty of an offence against section 19.

14 Compensation

(1) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the **applicant**), that another person (the **respondent**) took or is taking a reprisal against the applicant, the Court may:

- (a) in any case—make an order requiring the respondent to compensate the applicant for loss, damage or injury as a result of the reprisal; or
- (b) if the Court is satisfied that the respondent took or is taking the reprisal in connection with the respondent's position as an employee:
 - (i) make an order requiring the respondent to compensate the applicant for a part of loss, damage or injury as a result of the reprisal, and make another order requiring the respondent's employer to compensate the applicant for a part of loss, damage or injury as a result of the reprisal; or
 - (ii) make an order requiring the respondent and the respondent's employer jointly to compensate the applicant for loss, damage or injury as a result of the reprisal; or
 - (iii) make an order requiring the respondent's employer to compensate the applicant for loss, damage or injury as a result of the reprisal.

- (2) The Federal Court or Federal Circuit and Family Court of Australia (Division 2) must not make an order under paragraph (1)(b) if the respondent's employer establishes that it took reasonable precautions, and exercised due diligence, to avoid the reprisal.
- (3) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) makes an order under subparagraph (1)(b)(ii), the respondent and the respondent's employer are jointly and severally liable to pay the compensation concerned.

15 Injunctions, apologies and other orders

- (1) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the **applicant**), that another person (the **respondent**) took or is taking a reprisal against the applicant, the Court may make any or all of the following orders:
 - (a) an order granting an injunction, on such terms as the Court thinks appropriate:
 - (i) restraining the respondent from taking the reprisal; or
 - (ii) if the reprisal involves refusing or failing to do something—requiring the respondent to do that thing;
 - (b) an order requiring the respondent to apologise to the applicant for taking the reprisal;
 - (c) any other order the Court thinks appropriate.
- (2) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) has power under subsection (1) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who has:
 - (a) aided, abetted, counselled or procured the conduct against the applicant; or
 - (b) induced the conduct against the applicant, whether through threats or promises or otherwise; or
 - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the conduct against the applicant; or
 - (d) conspired with others to effect the conduct against the applicant.

16 Reinstatement

If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the **applicant**), that:

- (a) another person (the **respondent**) has taken, or is taking, a reprisal against the applicant; and
- (b) the applicant is or was employed in a particular position with the respondent; and
- (c) the reprisal wholly or partly consists, or consisted, of the respondent terminating, or purporting to terminate, the applicant's employment;

the Court may order that the applicant be reinstated in that position or a position at a comparable level.

20 Disclosure or use of identifying information

Disclosure of identifying information

- (1) A person (the **first person**) commits an offence if:
 - (a) another person (the **second person**) has made a public interest disclosure; and
 - (b) the first person discloses information (**identifying information**) that:
 - (i) was obtained by any person in that person's capacity as a public official; and
 - (ii) is likely to enable the identification of the second person as a person who has made a public interest disclosure; and
 - (c) the disclosure is to a person other than the second person.

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

Use of identifying information

(2) A person commits an offence if the person uses identifying information.

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

Exceptions

(3) Subsections (1) and (2) do not apply if one or more of the following applies:

- (a) the disclosure or use of the identifying information is for the purposes of this Act;
- (b) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the Ombudsman by section 5A of the *Ombudsman Act 1976*;
- (c) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the IGIS by section 8A of the *Inspector-General of Intelligence and Security Act 1986*;
- (d) the disclosure or use of the identifying information is for the purposes of:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory;
- (e) the person likely to be identified by the identifying information has consented to the disclosure or use of the identifying information, or acted in a way that is inconsistent with keeping that person's identity confidential;
- (f) the identifying information has previously been lawfully published.

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

(4) For the purposes of paragraph (3)(a), and without limitation, a person discloses or uses identifying information for the purposes of this Act if the person does so:

- (a) for the purpose of providing assistance in relation to a public interest disclosure; or
- (b) for the purpose of providing legal advice, or other professional assistance, relating to a public interest disclosure, in the circumstances mentioned in paragraph 67(2)(a); or
- (c) in the performance or exercise (or purported performance or exercise) of a function or power conferred by this Act, in the circumstances mentioned in subsection 78(1).

26 Meaning of *public interest disclosure*

(1) A disclosure of information is a ***public interest disclosure*** if:

- (a) the disclosure is made by a person (the ***discloser***) who is, or has been, a public official; and
- (b) the recipient of the information is a person of the kind referred to in column 2 of an item of the following table; and
- (c) all the further requirements set out in column 3 of that item are met.

Public interest disclosures

Item	Column 1	Column 2	Column 3
	Type of disclosure	Recipient	Further requirements
1	Internal disclosure	An authorised internal recipient, or a supervisor	<ul style="list-style-type: none">(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.(b) The disclosure is not made in the course of performing the discloser's ordinary functions as a public official.

Public interest disclosures

Item	Column 1	Column 2	Column 3
	Type of disclosure	Recipient	Further requirements
of the discloser			
2	External disclosure	Any person other than a foreign public official	<p>(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.</p> <p>(b) On a previous occasion, the discloser made an internal disclosure of information that consisted of, or included, the information now disclosed.</p> <p>(c) Any of the following apply:</p> <ul style="list-style-type: none"> (i) a disclosure investigation relating to the internal disclosure was conducted under Division 2 of Part 3, and the discloser believes on reasonable grounds that the investigation was inadequate; (ii) a disclosure investigation relating to the internal disclosure was conducted (whether or not under Division 2 of Part 3), and the discloser believes on reasonable grounds that the response to the investigation was inadequate; (iii) this Act requires an investigation relating to the internal disclosure to be conducted under Division 2 of Part 3, and that investigation has not been completed within the time limit under section 52. <p>(e) The disclosure is not, on balance, contrary to the public interest.</p> <p>(f) No more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct.</p> <p>(h) The information does not consist of, or include, intelligence information.</p> <p>(i) None of the conduct with which the disclosure is concerned relates to an intelligence agency.</p>
3	Emergency disclosure	Any person other than a foreign public official	<p>(a) The discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment.</p> <p>(b) The extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger.</p> <p>(c) If the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure.</p> <p>(d) If the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying this disclosure being made before a disclosure investigation of the internal disclosure is completed.</p> <p>(f) The information does not consist of, or include, intelligence information.</p>
4	Legal practitioner disclosure	An Australian legal practitioner	<p>(a) The disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a public interest disclosure.</p> <p>(b) If the discloser knew, or ought reasonably to have known, that any of the information has a national security or other protective security classification, the recipient holds the appropriate level of security clearance.</p>

Public interest disclosures

Item	Column 1	Column 2	Column 3
	Type of disclosure	Recipient	Further requirements
(c) The information does not consist of, or include, intelligence information.			

(1A) A disclosure of information is also a **public interest disclosure** if:

- (a) the disclosure is made by a person who is, or has been, a public official; and
- (b) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct; and
- (c) the disclosure is a NACC disclosure.

(2) However, a disclosure made before the commencement of this section is not a **public interest disclosure**.

(2A) A response to a disclosure investigation is taken, for the purposes of item 2 of the table in subsection (1), not to be inadequate to the extent that the response involves action that has been, is being, or is to be taken by:

- (a) a Minister; or
- (b) the Speaker of the House of Representatives; or
- (c) the President of the Senate.

(3) In determining, for the purposes of item 2 of the table in subsection (1), whether a disclosure is not, on balance, contrary to the public interest, regard must be had to the following:

- (aa) whether the disclosure would promote the integrity and accountability of the Commonwealth public sector;
- (ab) the extent to which the disclosure would expose a failure to address serious wrongdoing in the Commonwealth public sector;
- (ac) the extent to which it would assist in protecting the discloser from adverse consequences relating to the disclosure if the disclosure were a public interest disclosure;
- (ad) the principle that disclosures by public officials should be properly investigated and dealt with;
- (ae) the nature and seriousness of the disclosable conduct;
- (a) any risk that the disclosure could cause damage to any of the following:
 - (i) the security of the Commonwealth;
 - (ii) the defence of the Commonwealth;
 - (iii) the international relations of the Commonwealth;
 - (iv) the relations between the Commonwealth and a State;
 - (v) the relations between the Commonwealth and the Australian Capital Territory;
 - (vi) the relations between the Commonwealth and the Northern Territory;
 - (vii) the relations between the Commonwealth and Norfolk Island;
- (b) if any of the information disclosed in the disclosure is Cabinet information—the principle that Cabinet information should remain confidential unless it is already lawfully publicly available;
- (c) if any of the information disclosed in the disclosure was communicated in confidence by or on behalf of:
 - (i) a foreign government; or
 - (ii) an authority of a foreign government; or
 - (iii) an international organisation;

the principle that such information should remain confidential unless that government, authority or organisation, as the case may be, consents to the disclosure of the information;

- (d) any risk that the disclosure could prejudice the proper administration of justice;
- (e) the principle that legal professional privilege should be maintained;
- (f) any other relevant matters.

30 Officers or employees of a contracted service provider

(1) For the purposes of this Act, if an individual is a public official because the individual:

- (a) is an officer or employee of a contracted service provider for a Commonwealth contract; and
- (b) provides services for the purposes (whether direct or indirect) of the Commonwealth contract;

the individual does not engage in conduct in connection with his or her position as such a public official unless the conduct is in connection with entering into, or giving effect to, the contract.

(2) A **contracted service provider** for a Commonwealth contract is:

- (a) a person who:
 - (i) is a party to the Commonwealth contract; and
 - (ii) is responsible for the provision of goods or services under the Commonwealth contract; or
- (b) a person who:
 - (i) is a party to a contract (the **subcontract**) with a person who is a contracted service provider for the Commonwealth contract under paragraph (a) (or under a previous application of this paragraph); and
 - (ii) is responsible under the subcontract for the provision of goods or services for the purposes (whether direct or indirect) of the Commonwealth contract.

(3) A **Commonwealth contract** is a contract:

- (a) to which the Commonwealth or an agency is a party; and
- (b) under which goods or services are to be, or were to be, provided:
 - (i) to the Commonwealth or an agency; or
 - (ii) for or on behalf of the Commonwealth or an agency, and in connection with the performance of its functions or the exercise of its powers.

(4) However, a **Commonwealth contract** does not include a grant covered by an instrument made under section 105C of the *Public Governance, Performance and Accountability Act 2013* (instruments relating to grants).

69 Public officials

(1) For the purposes of this Act:

- (a) a **public official** means an individual mentioned in column 1 of an item of the following table; and
- (b) the public official **belongs** to the agency mentioned in column 2 of the item.

Public officials and the agencies to which they belong

Item	Column 1 Public official	Column 2 Agency to which the public official belongs
1	An APS employee in a Department.	The Department.
2	A member of staff of an agency other than a Department (including an APS employee in the agency).	The agency.
3	A Secretary of a Department.	The Department.
4	The principal officer of an agency other than a Department (see section 73).	The agency.
7	An individual who constitutes a prescribed authority.	The prescribed authority.
8	A member of a prescribed authority (other than a court).	The prescribed authority.
9	A director of a Commonwealth company.	The Commonwealth company.
10	A member of the Defence Force, or a cadet, officer or instructor in the Australian Defence Force Cadets.	The Defence Department.

Public officials and the agencies to which they belong

Item	Column 1	Column 2
	Public official	Agency to which the public official belongs
11	An AFP appointee (within the meaning of the <i>Australian Federal Police Act 1979</i>).	The Australian Federal Police.
12	A Parliamentary Service employee (within the meaning of the <i>Parliamentary Service Act 1999</i>).	The Department in which the Parliamentary service employee is employed.
13	An individual who: <ul style="list-style-type: none"> (a) is employed by the Commonwealth otherwise than as an APS employee; and (b) performs duties for an agency. 	The agency.
14	A statutory officeholder, other than an individual covered by any of the above items.	Whichever of the following agencies is applicable: <ul style="list-style-type: none"> (a) if the statutory officeholder is a deputy (however described) of the principal officer of an agency—that agency; (b) if the statutory officeholder performs the duties of his or her office as duties of his or her employment as an officer of or under an agency—that agency; (c) otherwise—the agency ascertained in accordance with the PID rules.
15	An individual who is a contracted service provider for a Commonwealth contract.	Whichever of the following agencies is applicable: <ul style="list-style-type: none"> (a) if the relevant services are to be, or were to be, provided wholly or principally for the benefit of an agency, or of a party to a contract with an agency—that agency; (b) otherwise—the agency ascertained in accordance with the PID rules.
16	An individual who: <ul style="list-style-type: none"> (a) is an officer or employee of a contracted service provider for a Commonwealth contract; and (b) provides services for the purposes (whether direct or indirect) of the Commonwealth contract. 	Whichever of the following agencies is applicable: <ul style="list-style-type: none"> (a) if the relevant services are to be, or were to be, provided wholly or principally for the benefit of an agency, or of a party to a contract with an agency—that agency; (b) otherwise—the agency ascertained in accordance with the PID rules.
17	An individual (other than a statutory officeholder or an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the individual by or under a law of the Commonwealth, other than: <ul style="list-style-type: none"> (a) the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>; or (b) the <i>Australian Capital Territory (Self-Government) Act 1988</i>; or (c) the <i>Corporations Act 2001</i>; or (d) the <i>Northern Territory (Self-Government) Act 1978</i>; or (e) a provision prescribed by the PID rules. 	The Department administered by the Minister administering that law.

Public officials and the agencies to which they belong

Item	Column 1	Column 2
	Public official	Agency to which the public official belongs
17A	An individual who exercises powers, or performs functions, conferred on the individual under a law in force in Norfolk Island (whether the law is a law of the Commonwealth or a law of the Territory).	The Department administered by the Minister administering the <i>Norfolk Island Act 1979</i> .
18	An individual who exercises powers, or performs functions, conferred on the individual under a law in force in the Territory of Christmas Island (whether the law is a law of the Commonwealth or a law of the Territory).	The Department administered by the Minister administering the <i>Christmas Island Act 1958</i> .
19	An individual who exercises powers, or performs functions, conferred on the individual under a law in force in the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory).	The Department administered by the Minister administering the <i>Cocos (Keeling) Islands Act 1955</i> .
20	The Registrar, or a Deputy Registrar, of Aboriginal and Torres Strait Islander Corporations.	The Department administered by the Minister administering the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> .

Note: A public interest disclosure may be made by a person who is, or has been, a public official within the meaning of this Subdivision (see section 26).

(2) A **statutory officeholder** means an individual (other than an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:

- (a) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (b) the *Australian Capital Territory (Self-Government) Act 1988*; or
- (c) the *Corporations Act 2001*; or
- (e) the *Northern Territory (Self-Government) Act 1978*.

(3) For the purposes of item 2 of the table in subsection (1):

- (a) a person who is a member of the staff referred to in subsection 31(1) of the *Ombudsman Act 1976* is taken to be a member of the staff of the Ombudsman; and
- (b) a person covered by subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986* is taken to be a member of the staff of the IGIS; and
- (c) a person (other than the National Anti-Corruption Commissioner) who is listed in section 266 of the *National Anti-Corruption Commission Act 2022* is taken to be a member of the staff of the National Anti-Corruption Commission.

(4) Despite subsections (1) and (2), the following are not **public officials**:

- (a) a judicial officer;
- (b) a member of a Royal Commission;
- (c) a member of Parliament;
- (d) a person employed under the *Members of Parliament (Staff) Act 1984*.

National Disability Insurance Scheme Act 2013 (Cth)

73ZA Disclosures qualifying for protection

(1) This section applies to a disclosure of information by a person (the **discloser**) who is, in relation to an NDIS provider, any of the following:

- (a) if the NDIS provider is a body corporate—an officer or employee of the body corporate, or a person who has a contract for the supply of goods or services to, or on behalf of, the body corporate;
- (b) if the NDIS provider is an unincorporated association—a member of the committee of management or an employee of the association, or a person who has a contract for the supply of goods or services to, or on behalf of, the association;
- (c) if the NDIS provider is a partnership—a partner in or an employee of the partnership, or a person who has a contract for the supply of goods or services to, or on behalf of, the partnership;
- (d) in any case—a person with disability who is receiving a support or service from the NDIS provider, or a nominee, family member, carer, independent advocate or significant other of that person.

(2) The disclosure of the information by the discloser qualifies for protection under this Division if:

- (a) the disclosure is made to one of the following:
 - (i) the Commissioner;
 - (ii) the Agency;
 - (iii) if the NDIS provider is a body corporate—a member of the key personnel of the body corporate;
 - (iv) if the NDIS provider is an unincorporated association—a member of the key personnel of the association;
 - (v) if the NDIS provider is a partnership—a partner; and
- (b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
- (c) the discloser has reasonable grounds to suspect that the information indicates that an NDIS provider has, or may have, contravened a provision of this Act; and
- (d) the discloser makes the disclosure in good faith.

(3) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

73ZB Disclosure that qualifies for protection not actionable etc.

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

- (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.

Note: This subsection does not provide that the person is not 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 (see subsection (3)) 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) For the purpose of paragraph (2)(a), **qualified privilege**, in respect of the disclosure, means that the person:

- (a) has qualified privilege in proceedings for defamation; and
- (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person;

in respect of the disclosure.

(4) For the purpose of paragraph (3)(b), **malice** includes ill will to the person concerned or any other improper motive.

(5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

73ZC Victimisation prohibited

Actually causing detriment to another person

(1) A person (the **first person**) contravenes this subsection 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) the first person intends that his or her conduct cause detriment to the second person; and
- (d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Division.

Civil penalty: 500 penalty units.

Threatening to cause detriment to another person

(2) A person (the **first person**) contravenes this subsection 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 Division.

Civil penalty: 500 penalty units.

Threats

(3) For the purpose of subsection (2), a threat may be:

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

(4) In proceedings for a civil penalty order against a person for a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

73ZD Right to compensation

If:

- (a) a person contravenes subsection 73ZC(1) or (2); and
- (b) another person suffers damage because of the contravention;

the person in contravention is liable to compensate the other person for the damage.

Aged Care Act 2024 (Cth)

547 Disclosures qualifying for protection

A disclosure of information by an individual (*the discloser*) qualifies for protection under this section if:

(a) the disclosure is made to one of the following:

- (i) an Appointed Commissioner or a member of the staff of the Commission;
- (ii) the System Governor, or an official of the Department;
- (iii) a registered provider;
- (iv) a responsible person of the registered provider;
- (v) an aged care worker of a registered provider;
- (vi) a police officer;
- (vii) an independent aged care advocate; and

(b) the disclosure is made orally or in writing (and whether made anonymously or not); and

(c) the discloser has reasonable grounds to suspect that the information indicates that an entity may have contravened a provision of this Act.

548 Protections

(1) If an individual makes a disclosure that qualifies for protection under section 547:

- (a) the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) 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.

Note: The individual is still subject to any civil or criminal liability for conduct of the individual that may be revealed by the disclosure.

(2) Without limiting subsection (1), a contract to which the individual is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract

549 Recipient to take steps to preserve anonymity

If:

- (a) an individual makes a disclosure that qualifies for protection under section 547 to an entity (the recipient); and
- (b) the individual requests that the individual, or any other individual named in the request, remain anonymous;

the recipient must take such steps as are reasonable in the circumstances to preserve the anonymity of individuals named in the request.

Note 1: For example, if disclosing the name of an individual is necessary to lessen or prevent a serious threat to the health, safety or well-being of another individual, disclosing the identity of the first-mentioned individual may be reasonable in the circumstances.

However, if the serious threat could be lessened without naming the individual, then disclosing the name is unlikely to be reasonable in the circumstances.

Note 2: An entity may be liable to a civil penalty if the entity discloses certain information relating to the identity of an individual who makes a disclosure that qualifies for protection (see section 550).

550 Confidentiality of identity of disclosers

(1) An entity contravenes this subsection if:

- (a) an individual (the *discloser*) makes a disclosure of information (the *qualifying disclosure*) that qualifies for protection under section 547; and
- (b) the entity 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 entity obtained directly or indirectly because of the qualifying disclosure; and
- (d) the disclosure referred to in paragraph (b) is not authorised under subsection (2).

Civil penalty: 30 penalty units.

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

- (a) the disclosure is made to an Appointed Commissioner or a member of the staff of the Commission; or
- (b) the disclosure is made to the System Governor, or an official of the Department; or
- (c) the disclosure is made to the Inspector-General of Aged Care; or
- (d) the disclosure is made to a police officer; or
- (e) the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or
- (f) the disclosure is made with the consent of the discloser; or
- (g) the disclosure is necessary to lessen or prevent a serious threat to the safety, health or wellbeing of one or more individuals; or
- (h) the disclosure is made to a court, tribunal or a Royal Commission (within the meaning of the *Royal Commissions Act 1902*); or
- (i) the discloser elects to have the qualifying disclosure managed or dealt with as:
 - (i) a complaint under section 361; or
 - (ii) a complaint or feedback under paragraph 165(1)(b); or
 - (j) both of the following apply:
 - (i) the confidential information is in the public domain before the disclosure is made;
 - (ii) the original disclosure of the confidential information into the public domain (before the disclosure is made) was not in contravention of subsection (1).

(3) Subsection (1) does not apply if:

- (a) the confidential information disclosed by the entity (as mentioned in paragraph (1)(b)):
 - (i) is not the identity of the discloser; and
 - (ii) is reasonably necessary for the purposes of dealing with the matter referred to in paragraph 547(c) to which the qualifying disclosure relates; and
- (b) the entity takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure of the confidential information referred to in paragraph (1)(b).

551 Victimisation prohibited

Actually causing detriment

(1) An entity contravenes this subsection if:

- (a) the entity engages in conduct; and
- (b) the entity's conduct causes any detriment to an individual (the *first individual*) or to another individual or to another entity that employs or is otherwise associated with the first individual; and
- (c) the entity engages in the conduct solely or partly because the entity believes or suspects that the first individual or another individual has, may have, or intends to make, a disclosure that qualifies for protection under section 547.

Civil penalty: 500 penalty units.

(2) In proceedings for a civil penalty order against an entity for a contravention of subsection (1), it is not necessary to prove that the first individual or other individual has done, may have done or intends to do a thing mentioned in paragraph (1)(c).

Threatening to cause detriment

(3) An entity contravenes this subsection if:

- (a) the entity makes to an individual (the *first individual*) a threat to cause any detriment to the first individual or to another individual or to another entity that employs or is otherwise associated with the first individual; and
- (b) the entity:
 - (i) intends the first individual to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the first individual to fear that the threat will be carried out; and
- (c) the entity engages in the conduct solely or partly because the entity believes or suspects that the first individual or another individual has, may have, or intends to make, a disclosure that qualifies for protection under section 547.

Civil penalty: 500 penalty units.

Threats

(4) For the purpose of subsection (3), a threat may be:

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

(5) In proceedings for a civil penalty order against an entity for a contravention of subsection (3), it is not necessary to prove:

- (a) that the first individual actually feared that the threat would be carried out; or
- (b) that an individual has done, may have done or intends to do a thing mentioned in paragraph (3)(c).

Exception—reasonable administrative action

(6) Subsections (1) and (3) do not apply if the conduct engaged in by the entity is administrative action that is reasonable to protect the first individual from detriment.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

552 Court orders

A court may make any order the court considers appropriate if the court is satisfied that an entity has contravened, or proposes to contravene, subsection 551(1) or (3), including any of the following orders:

- (a) an order granting an injunction, or interim injunction, to prevent, stop or remedy the effects of a contravention;
- (b) an order awarding compensation for loss, damage or injury that an entity has suffered because of the contravention;
- (c) an order for reinstatement of an individual;
- (d) an order for exemplary damages.

553 Registered providers' obligations in relation to disclosers

Ensuring aged care workers and responsible persons who make disclosures are not victimised

- (1) A registered provider must ensure, as far as reasonably practicable, compliance with section 549, subsection 550(1) and subsections 551(1) and (3) in relation to an individual who:
 - (a) is an aged care worker or responsible person of the registered provider; and
 - (b) makes a disclosure that qualifies for protection under section 547.

Note: The obligation under subsection (1) covers not only compliance by the registered provider with those provisions but extends to the registered provider ensuring as far as reasonably practicable that there is also compliance by others, such as the provider's other aged care workers, responsible persons and associated providers.

Protecting discloser identities

- (2) If an individual makes a disclosure that qualifies for protection under section 547 to a person (the *recipient*) who is:
 - (a) an aged care worker of a registered provider; or
 - (b) a responsible person of a registered provider;

the provider must take reasonable measures to ensure that the recipient does not disclose the fact that the individual was the maker of the disclosure, except as authorised by this Part.

554 Concurrent operation of State and Territory laws

This Part does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

Taxation Administration Act 1953 (Cth)

14ZZU Eligible whistleblowers

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

- (a) an officer (within the meaning of the *Corporations Act 2001*) of the entity;
- (b) an employee of the entity;
- (c) an individual who supplies services or goods to the entity (whether paid or unpaid);
- (d) an employee of a person that supplies services or goods to the entity (whether paid or unpaid);
- (e) an individual who is an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the 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 entity.

14ZZV Eligible recipients

- (1) Each of the following is an **eligible recipient** in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*):
 - (a) an auditor, or a member of an audit team conducting an audit, of the entity;
 - (b) a registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*) who provides tax agent services (within the meaning of that Act) or BAS services (within the meaning of that Act) to the entity;
 - (c) a person authorised by the entity to receive disclosures that may qualify for protection under this Part;
 - (d) a person or body prescribed for the purposes of this paragraph in relation to the entity.
- (2) If the entity is a body corporate, each of the following is an **eligible recipient** in relation to the entity:
 - (a) a director, secretary or senior manager (within the meaning of the *Corporations Act 2001*) of the body corporate;
 - (b) any other employee or officer (within the meaning of the *Corporations Act 2001*) of the body corporate who has functions or duties that relate to the tax affairs (within the meaning of section 14ZZT) of the body corporate.
- (3) If the entity is a trust, each of the following is an **eligible recipient** in relation to the entity:
 - (a) a trustee of the trust;
 - (b) a person authorised by a trustee of the trust to receive disclosures that may qualify for protection under this Part.
- (4) If the entity is a partnership, each of the following is an **eligible recipient** in relation to the entity:
 - (a) a partner in the partnership;
 - (b) a person authorised by a partner in the partnership to receive disclosures that may qualify for protection under this Part.

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

14ZZW 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: Imprisonment for 6 months or 60 penalty units, or both.

(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
- (c) is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or
- (d) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or
- (e) is made with the consent of the discloser.

(3) Subsection (1) does not apply if:

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

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

14ZZX 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, criminal or administrative liability (including disciplinary action) 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 or the Tax Practitioners Board--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, criminal or administrative 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.

14ZZY 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: Imprisonment for 2 years or 240 penalty units, or both.

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: Imprisonment for 2 years or 240 penalty units, or both.

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

14ZZZ Compensation and other remedies--circumstances in which an order may be made

(1) A court may make an order under section 14ZZZA in relation to a person (the **first person**) if:

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

- (i) causes any detriment to another person (the **second person**); or
- (ii) constitutes the making of a threat to cause any such detriment to another person (the **second person**); and

(b) when the first person engages in the detrimental 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

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

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

(a) the first person is or was an officer (within the meaning of the *Corporations Act 2001*) or employee of a body corporate; and

(b) paragraphs (1)(a), (b) and (c) of this section apply to the body corporate because of detrimental conduct engaged in by the body corporate; and

(c) the first person:

- (i) aided, abetted, counselled or procured the detrimental conduct; or
- (ii) induced, whether by threats or promises or otherwise, the detrimental conduct; or
- (iii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the detrimental conduct; or
- (iv) conspired with others to effect the detrimental conduct.

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

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

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

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

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

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

Burden of proof

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

- (a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:
 - (i) if subsection (1) of this section applies--paragraph (1)(a); or
 - (ii) if subsection (2) of this section applies--paragraph (1)(a), as mentioned in paragraph (2)(b); or
 - (iii) if subsection (2A) of this section applies--paragraphs (2A)(a) and (d); and
- (b) if that onus is discharged--the other person bears the onus of proving that the claim is not made out.

Threats

(3) For the purposes of this section, a threat may be:

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

(4) In proceedings for the purposes of section 14ZZZA, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

14ZZZA Compensation and other remedies--orders that may be made

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

- (a) an order requiring the first person to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct;
- (b) if the court is satisfied that the first person engaged in the detrimental conduct in connection with the first person's position as an employee:
 - (i) an order requiring the first person to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct, and an order requiring the first person's employer to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct; or
 - (ii) an order requiring the first person and the first person's employer jointly to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct; or
 - (iii) an order requiring the first person's employer to compensate the second person, or any other person, for loss, damage or injury as a result of the detrimental conduct;
- (c) an order granting an injunction, on such terms as the court thinks appropriate, to prevent, stop or remedy the effects of the detrimental conduct;
- (d) an order requiring the first person to apologise to the second person, or any other person, for engaging in the detrimental conduct;

- (e) if the second person is or was employed in a particular position and the detrimental conduct wholly or partly consists, or consisted, of the termination, or purported termination, of the second person's employment-- an order that the second person be reinstated in that position or a position at a comparable level;
- (f) if the court thinks it is appropriate--an order requiring the first person to pay exemplary damages to the second person, or any other person;
- (g) any other order the court thinks appropriate.

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

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

- (a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;
- (b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) of the *Corporations Act 2001* (whether or not section 1317AI of that Act requires the employer to have such a policy)--the extent to which the employer gave effect to that policy;
- (c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.

(4) If the court makes an order under subparagraph (1)(b)(ii), the first person and the first person's employer are jointly and severally liable to pay the compensation concerned.

Public Interest Disclosure Act 2010 (Qld)

17 How disclosure to be made

- (1) A person may make a disclosure to a proper authority in any way, including anonymously.
- (2) However, if a proper authority has a reasonable procedure for making a public interest disclosure to the proper authority, the person must use the procedure.
- (3) Despite subsection (2), if the proper authority is a public sector entity, the person may make the disclosure to—
 - (a) its chief executive officer; or
 - (b) for a public sector entity that is a department—the Minister responsible for its administration; or
 - (c) if the proper authority that is a public sector entity has a governing body—a member of its governing body; or
 - (d) if the person is an officer of the entity—another person who, directly or indirectly, supervises or manages the person; or
 - (e) an officer of the entity who has the function of receiving or taking action on the type of information being disclosed.

Examples of officers for paragraph (e)—

- 1 an officer of an entity's ethical standards unit, if the disclosure is made under section 13(1)(a)(i)
- 2 a health officer or environmental officer of a department having a statutory or administrative responsibility to investigate something mentioned in section 12(1)(a), (b) or (c) or section 13(1)(c) or (d)
- 3 the officer of an entity in charge of its human resource management if the public interest disclosure is made under section 12(1)(d) and is about detriment to the career of an employee of the entity

- (4) This Act does not affect a procedure required under another Act for disclosing the type of information being disclosed
- (5) If a public interest disclosure is properly made to a proper authority, the proper authority is taken to have received the disclosure for the purposes of this Act.

20 When disclosure may be made to a journalist

- (1) This section applies if—
 - (a) a person has made a public interest disclosure under this chapter; and
 - (b) the entity to which the disclosure was made or, if the disclosure was referred under section 31 or 34, the entity to which the disclosure was referred—
 - (i) decided not to investigate or deal with the disclosure; or
 - (ii) investigated the disclosure but did not recommend the taking of any action in relation to the disclosure; or

- (iii) did not notify the person, within 6 months after the date the disclosure was made, whether or not the disclosure was to be investigated or dealt with.

(2) The person may make a disclosure of substantially the same information that was the subject of the public interest disclosure mentioned in subsection (1)(a) to a journalist.

(3) To remove any doubt, it is declared that—

- (a) the disclosure of information to a journalist under this section is a public interest disclosure; and
- (b) a journalist to whom information is disclosed under this section is not a relevant person for the purposes of section 64; and
- (c) a journalist to whom information is disclosed under this section does not, for the purposes of section 65, gain the information because of the journalist's involvement in this Act's administration.

(4) In this section—

journalist means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.

36 Immunity from liability

A person who makes a public interest disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for making the disclosure.

38 Protection from defamation action

Without limiting section 36, in a proceeding for defamation, a person who makes a public interest disclosure has a defence of absolute privilege for publishing the information disclosed.

40 Reprisal and grounds for reprisal

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that—
 - (a) the other person or someone else has made, or intends to make, a public interest disclosure; or
 - (b) the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person.
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention mentioned in subsection (3) to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

41 Offence of taking reprisal

(1) A person must not take a reprisal.

Maximum penalty—167 penalty units or 2 years imprisonment.

(2) An offence against subsection (1) is an indictable offence.

42 Damages entitlement for reprisal

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.
- (4) The right of a person to bring proceedings for damages under this section does not affect any other right or remedy available to the person arising from the reprisal.
- (5) Proceedings for damages may be brought under this section even if a prosecution in relation to the reprisal has not been brought, or can not be brought, under section 41.
- (6) The *Workers' Compensation and Rehabilitation Act 2003* does not apply to proceedings for damages brought under this section.

Public Interest Disclosures Act 2018 (SA)

5 Immunity for appropriate disclosure of public interest information

- (1) If—
 - (a) a person makes an appropriate disclosure of environmental and health information; or
 - (b) a public officer makes an appropriate disclosure of public administration information, the person is not subject to any liability as a result of that disclosure.
- (2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the person.
- (3) A person makes an "appropriate disclosure" of environmental and health information for the purposes of this Act if the disclosure is made to a relevant authority and the person—
 - (a) believes on reasonable grounds that the information is true; or
 - (b) is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.
- (4) A public officer makes an "appropriate disclosure" of public administration information for the purposes of this Act if the disclosure is made to a relevant authority and the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.
- (5) A disclosure of public interest information is made to a "relevant authority" if it is made to—
 - (a) where the information relates to a public officer—
 - (i) a person who is, in accordance with any guidelines prepared under section 14, designated as a person who is taken to be responsible for the management or supervision of the public officer or to the relevant responsible officer; or
 - (ii) a person who is, in fact, responsible for the management or supervision of the public officer or to the relevant responsible officer; or
 - (b) where the information relates to a public sector agency or public sector employee—
 - (i) the Commissioner for Public Sector Employment; or
 - (ii) the responsible officer for the relevant public sector agency; or
 - (c) where the information relates to an agency to which the *Ombudsman Act 1972* applies—the Ombudsman; or
 - (d) where the information relates to a location within the area of a particular council established under the *Local Government Act 1999* —a member, officer or employee of that council; or
 - (e) where the information relates to a risk to the environment—the Environment Protection Authority; or

- (f) where the information relates to an irregular and unauthorised use of public money or substantial mismanagement of public resources—the Auditor-General; or
- (g) where the information relates to the commission, or suspected commission, of any offence—a member of the police force; or
- (h) where the information relates to a judicial officer—the Judicial Conduct Commissioner; or
- (i) where the information relates to a member of Parliament—the Presiding Officer of the House of Parliament to which the member belongs; or
- (j) where the information relates to a person or a matter of a prescribed class—an authority declared by the regulations to be a relevant authority in relation to such information; or
- (k) a Minister of the Crown; or
- (l) OPI; or
- (m) any other prescribed person or person of a prescribed class.

6 Disclosure to journalist or member of Parliament

A person makes an "appropriate disclosure" of public interest information for the purposes of this Act (other than section 7) if—

- (a) the person discloses the information to a journalist or a member of Parliament other than a Minister of the Crown; and
- (b) the person—
 - (i) has already made an appropriate disclosure of substantially the same information in accordance with section 5; and
 - (ii) made their identity known to the person to whom that disclosure was made; and
 - (iii) either—
 - (A) has not received notification in accordance with section 7(1)(b) within 30 days after making that disclosure; or
 - (B) has not received notification in accordance with section 7(3)(a) within 90 days after making that disclosure (or such longer period as may be specified by written notice given, within that period of 90 days, by the person required to give such notification); and
 - (iv) believes on reasonable grounds that the information is true.

8 Identity of informant to be kept confidential

- (1) A person to whom an appropriate disclosure of public interest information is made, or a person to whom such a disclosure is referred or who otherwise knows that such a disclosure has been made, must not, without the consent of the informant, knowingly divulge the identity of the informant except—

- (a) so far as may be necessary to ensure that the matters to which the information relates are properly investigated; or
- (b) in accordance with any applicable guidelines prepared under section 14.

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (2) The obligation to maintain confidentiality imposed by this section applies despite any other statutory provision, or a common law rule, to the contrary.

9 Victimisation

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate disclosure of public interest information commits an act of victimisation.
- (2) An act of victimisation under this Act may be dealt with—
 - (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (3) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner for Equal Opportunity is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner for Equal Opportunity may decline to act on the complaint or to proceed further with action on the complaint.
- (4) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- (5) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (6) Proceedings for an offence against subsection (5) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.
- (7) In this section—

"detriment" includes—

- (a) loss or damage (including damage to reputation); or
- (b) injury or harm (including psychological harm); or
- (c) intimidation or harassment; or
- (d) discrimination, disadvantage or adverse treatment in relation to a person's employment; or

- (e) threats of reprisal.
- (8) For the purposes of this section, a "threat" of reprisal may be—
 - (a) express or implied; or
 - (b) conditional or unconditional,

and in any proceedings dealing with an act of victimisation (including proceedings for an offence against subsection (5)) it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

11 Preventing or hindering disclosure

A person must not—

- (a) prevent another person from making an appropriate disclosure of public interest information under this Act; or
- (b) hinder or obstruct another person in making such a disclosure.

Maximum penalty: \$20 000 or imprisonment for 2 years.

Public Interests Disclosures Act 2012 (Vic)

9 Public interest disclosure

- (1) Subject to subsection (3) and Division 3, a public interest disclosure is a disclosure by a natural person of—
 - (a) information that shows or tends to show—
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; or
 - (b) information that the person reasonably believes shows or tends to show—
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45.
- (2) A public interest disclosure may be about conduct that has occurred before the commencement of this section.
- (3) A disclosure regarding the conduct of, or actions taken by, any of the following is not a public interest disclosure—
 - (a) the Office of the Special Investigations Monitor;
 - (b) the Special Investigations Monitor;
 - (c) a court;
 - (d) an investigating panel;
 - (e) a member of an investigating panel.

12 How a public interest disclosure may be made

- (1) A public interest disclosure to an entity must be made in accordance with the procedures established by the entity under section 58.
- (2) A public interest disclosure to an entity may be made to a person permitted to receive a disclosure on behalf of the entity (a **permitted person**).
- (3) A public interest disclosure may be made orally or in writing.
- (4) A public interest disclosure made to an entity in writing must be addressed to the entity or a permitted person and sent (by post or electronically) or delivered to, or left at, the office of the entity or the permitted person.
- (5) For the purposes of this Division, a person specified in column 2 of the Table in Schedule 2 is permitted to receive a public interest disclosure on behalf of the entity specified opposite in column 1 of that Table.

13 Persons or bodies to which public interest disclosures may be made

- (1) Unless required to be made to another entity under section 14 or 17, a public interest disclosure must be made to a person or entity in accordance with this section.
- (2) A public interest disclosure may be made to—

- (a) the IBAC; or
- (b) the Ombudsman; or
- (c) the Victorian Inspectorate.

(3) A public interest disclosure may be made to a public service body within the meaning of section (4)(1) of the **Public Administration Act 2004** if the disclosure relates to the conduct of the public service body or of a member, officer or employee of the public service body.

(4) Subsection (3) does not apply in relation to a service, program or initiative provided by a prescribed entity.

(5) A public interest disclosure may be made to a public officer prescribed for the purposes of this section if the disclosure relates to an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of that public officer.

39 Immunity from liability

- (1) A person who makes a public interest disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the disclosure.
- (2) Subsection (1) does not apply to a person who, in making the public interest disclosure, has contravened section 72(1) or (2) in relation to the information disclosed.

41 Protection from defamation action

- (1) Without limiting section 39, in any proceeding for defamation there is a defence of absolute privilege in respect of the making of a public interest disclosure.
- (2) Subsection (1) does not apply to a person who, in making the public interest disclosure, has contravened section 72(1) or (2) in relation to the information disclosed.

45 Protection from reprisal

- (1) A person must not take detrimental action against another person in reprisal for a public interest disclosure.
Penalty: 240 penalty units or 2 years imprisonment or both.
- (2) It is a defence in a proceeding for an offence against subsection (1) if a reason referred to in section 43(1)(a) was not a reason for the person taking the detrimental action against the other person.
- (3) It is a defence in a proceeding for an offence against subsection (1) if—
 - (a) the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee has determined that the disclosure is not a public interest complaint; and
 - (b) at the time the person took the detrimental action, the person knew of that determination.
- (4) Despite subsection (3), it is not a defence in a proceeding for an offence against subsection (1) if the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee (as the case may be) determined the disclosure is not a public interest complaint under section 26(5).

47 Proceedings for damages for reprisal

- (1) A person who takes detrimental action against another person in reprisal for a public interest disclosure is liable in damages for any injury, loss or damage to that other person.
- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.

- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the detrimental action.
- (5) Proceedings for damages under this section may be brought even if a prosecution in relation to the detrimental action has not been brought under section 45.
- (6) Without limiting the court's discretion, when granting a remedy under this section, the court may take into account any order made under section 46 or 49 in relation to the same conduct.
- (7) In proceedings under this section, costs against the person alleging that detrimental action has been taken in reprisal for a public interest disclosure must not be awarded unless the court is satisfied—
 - (a) the person's claim that detrimental action had occurred is vexatious; or
 - (b) the person did not conduct the litigation reasonably.

49 Injunction or order

- (1) If, on receipt of an application under section 50, the Supreme Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a public interest disclosure, the Court may—
 - (a) order the person who took the detrimental action to remedy that action; or
 - (b) grant an injunction in any terms the Court considers appropriate.
- (2) The Supreme Court, pending the final determination of an application under section 50, may—
 - (a) make an interim order in the terms of subsection (1)(a); or
 - (b) grant an interim injunction.
- (3) Without limiting the discretion of the Supreme Court, when granting a remedy under this section, the Court may take into account any order made under section 46 or 47 in relation to the same conduct.

53 Identity of person making assessable disclosure must not be disclosed

- (1) A person or body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure.

Penalty: In the case of a natural person, 120 penalty units or 12 months imprisonment or both.

In the case of a body corporate, 600 penalty units.

- (2) Subsection (1) does not apply if—
 - (a) the person who made the assessable disclosure has given written consent to an investigating entity to disclose—
 - (i) any information likely to lead to the person's identification; or
 - (ii) specific information likely to lead to the person's identification—
and the information is disclosed by the investigating entity after and in accordance with that consent; or
 - (ab) the person who made the assessable disclosure has given written consent to the Integrity and Oversight Committee or to an independent investigator engaged by the Committee under Part 4A to disclose—

- (i) any information likely to lead to the person's identification; or
- (ii) specific information likely to lead to the person's identification—
 - and the information is disclosed by the Committee or the independent investigator after and in accordance with that consent; or

- (b) the person or body discloses the information in accordance with section 54; or
- (c) the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee has determined that the assessable disclosure is not a public interest complaint and the person or body discloses the information after that determination; or
- (d) an investigating entity has—
 - (i) published in a report to Parliament under this or any other Act, or otherwise made public, the information; and
 - (ii) in doing so, acted consistently with the obligations relating to confidentiality that apply to the investigating entity under this Act—
 - and the person or body discloses the information after that publication; or
- (e) the Integrity and Oversight Committee has published the information in a report to Parliament under this or any other Act and the person or body discloses the information after that publication.

54 Circumstances in which information may be disclosed

- (1) A person or body may, in any of the circumstances set out in subsection (2), disclose—
 - (a) the content, or information about the content, of an assessable disclosure; or
 - (b) information likely to lead to the identification of a person who has made an assessable disclosure.
- (2) For the purposes of subsection (1) information may be disclosed in the following circumstances—
 - (a) where necessary for the purpose of the exercise of functions under this Act;
 - (b) by an investigating entity, or an officer of an investigating entity, where necessary for the purpose of the exercise of functions under the Act, or part of the Act, under which the investigating entity, or the officer of the investigating entity, is authorised to investigate a public interest complaint;
 - (ba) to Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct;
 - (c) for the purpose of a proceeding for an offence against a relevant Act;
 - (d) for the purpose of a disciplinary process or action instituted in respect of conduct that could constitute an offence against a relevant Act;
 - (da) for the purpose of, or in the course of, a restorative engagement process, with the written consent of the person participating in the process who alleges that they are the victim of sex discrimination or sexual harassment;
 - (e) for the purpose of obtaining legal advice or representation in relation to—
 - (i) a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice;

- (ii) the person's rights, liabilities, obligations and privileges under a relevant Act;
- (f) by an Australian legal practitioner to whom an assessable disclosure or information has been disclosed in the circumstances specified in paragraph (e), for the purpose of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;
- (g) to an interpreter, for the purpose of enabling a person who does not have a sufficient knowledge of the English language to comply with this Part;
- (h) to a parent or guardian of a person or to an independent person, for the purpose of enabling a person who is under the age of 18 years to comply with this Part;
- (i) to an independent person, for the purpose of enabling a person who is illiterate or has a mental or physical impairment that prevents the person from understanding an obligation imposed under this Part to comply with this Part;
- (j) to any of the following for the purpose of assisting the person who made the assessable disclosure to seek advice or support in relation to the assessable disclosure—
 - (i) a registered health practitioner;
 - (ii) a trade union, within the meaning of section 93AB(11) of the Competition and Consumer Act 2010 of the Commonwealth, of which the person who made the assessable disclosure is a member;
 - (iii) an employee assistance program;
- (k) to the Victorian WorkCover Authority for the purpose of a workers' compensation claim;
- (l) to a prescribed service for a purpose prescribed for that service;
- (m) for the purpose of an application to the Fair Work Commission, including any related proceeding.

(3) For the purposes of subsection (2)—

"confidentiality notice" means—

- (a) a confidentiality notice issued by the IBAC under section 42(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) a confidentiality notice issued by the Victorian Inspectorate under section 38(1) of the **Victorian Inspectorate Act 2011**; or
- (c) a confidentiality notice issued by the Ombudsman under section 26C(1) of the **Ombudsman Act 1973**;
- (d) a confidentiality notice issued by the Chief Municipal Inspector under section 193 of the **Local Government Act 2020**; or
- (e) a confidentiality notice issued by the Racing Integrity Commissioner under section 37T of the **Racing Act 1958**; or
- (f) a confidentiality notice issued by the Information Commissioner under section 61TJ of the **Freedom of Information Act 1982**; or
- (g) a confidentiality notice issued by the Parliamentary Workplace Standards and Integrity Commission under section 77 of the **Parliamentary Workplace Standards and Integrity Act 2024**;

"Fair Work Commission" means the body established under section 575 of the Fair Work Act 2009 of the Commonwealth;

"officer of an investigating entity" means a person who is—

- (a) carrying out investigative functions in relation to a public interest complaint; and
- (b) is authorised to perform those functions by or under the Act under which the public interest complaint is being investigated by the investigating entity;

"registered health practitioner" means a person registered under the Health Practitioner National Law to practise a health profession (other than as a student);

"relevant Act" means—

- (a) this Act; or
- (b) the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (c) the **Victorian Inspectorate Act 2011**; or
- (d) the **Ombudsman Act 1973**; or
- (e) Part 10 of the **Victoria Police Act 2013**; or
- (f) the **Judicial Commission of Victoria Act 2016**; or
- (g) Part IIIAA of the **Constitution Act 1975**; or
- (h) the **Local Government Act 2020**; or
- (i) the **Racing Act 1958**; or
- (j) the **Freedom of Information Act 1982**; or
- (k) the **Parliamentary Workplace Standards and Integrity Act 2024**;

restorative engagement process has the meaning given in section 174A(1) of the **Victoria Police Act 2013**;

"Victorian WorkCover Authority" has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**;

"witness summons" means—

- (a) a witness summons issued by the IBAC under section 120(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) a witness summons issued by the Victorian Inspectorate under section 53(1) of the **Victorian Inspectorate Act 2011**; or
- (c) a witness summons issued by the Ombudsman under section 18(1) of the **Ombudsman Act 1973**; or
- (d) a requirement to produce a document or thing under section 69 of the **Judicial Commission of Victoria Act 2016**; or
- (e) a witness summons issued under section 70 of the **Judicial Commission of Victoria Act 2016**.

Public Interest Disclosures Act 2003 (WA)

5 Appropriate disclosure of public interest information, making

- (1) Any person may make an appropriate disclosure of public interest information to a proper authority.

- (2) A person makes an appropriate disclosure of public interest information if, and only if, the person who makes the disclosure —
 - (a) believes on reasonable grounds that the information is true; or
 - (b) has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.
- (3) A disclosure of public interest information is made to a proper authority if —
 - (a) where the information relates to an act or omission that constitutes an offence under a written law — it is made to a police officer or to the Corruption and Crime Commission; or
 - (b) where the information relates to a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources — it is made to the Auditor General; or
 - (c) where the information relates to a matter of administration that can be investigated under section 14 of the *Parliamentary Commissioner Act 1971* — it is made to the Parliamentary Commissioner or to a person who occupies a position specified under section 23(1)(a) in relation to the public authority concerned; or
 - (d) where the information relates to a person who holds an appointment made under the *Police Act 1892* Part I, III, IIIA or IIIB — it is made to the Commissioner of Police or to the Corruption and Crime Commission; or
 - (e) where the information relates to a judicial officer — it is made to the Chief Justice; or
 - (f) where the information relates to a member of either House of Parliament — it is made to the Presiding Officer of the House of Parliament to which the member belongs; or
 - (g) where the information relates to a public officer (other than a member of Parliament, a Minister of the Crown, a judicial officer or an officer referred to in Schedule 1 to the *Parliamentary Commissioner Act 1971*) — it is made to the Commissioner or the Parliamentary Commissioner; or
 - (h) where the information relates to a matter falling within the sphere of responsibility of a public authority — it is made to a person who occupies a position specified under section 23(1)(a) in relation to that authority; or
 - (i) where the information relates to a person or a matter of a prescribed class — it is made to a person declared by the regulations to be a proper authority for the purposes of subsection (1) in relation to such information.
- (4) Where a public interest disclosure falls within 2 or more paragraphs of subsection (3), then it is made to a proper authority if made to any or all of the authorities contemplated by the applicable paragraphs.
- (5) A disclosure of public interest information may be made under this Act —
 - (a) even though anything to which the disclosure relates occurred before the commencement of this Act; and
 - (b) whether or not the person making the disclosure is able to identify any person whom the information concerns.
- (6A) A person may make a disclosure of public interest information anonymously.
- (6) Nothing in this Act entitles a person to disclose information that would otherwise be the subject of legal professional privilege.

7A Disclosure of public interest information to journalist, when may be made

(1) In this section —

journalist means a person engaged in the profession or occupation of journalism in connection with the publication of information in a medium for the dissemination to the public or a section of the public of news and observations on news.

(2) A person may make a disclosure to a journalist of substantially the same information that was the subject of a disclosure of public interest information that the person has already made under this Act if the proper authority to which the disclosure was made, or the person to whom a matter raised by the disclosure was referred under section 9(1)(b) —

- (a) has refused to investigate, or has discontinued the investigation of, a matter raised by the disclosure; or
- (b) has not completed an investigation of a matter raised by the disclosure within the period ending 6 months after the disclosure was made; or
- (c) has completed an investigation of a matter raised by the disclosure but has not recommended the taking of action in respect of the matter; or
- (d) has not complied with section 10(1) or (4), if applicable, in relation to the disclosure.

13 Immunity for person making appropriate disclosure of public interest information

A person who makes an appropriate disclosure of public interest information to a proper authority under section 5 —

- (a) incurs no civil or criminal liability for doing so; and
- (b) is not, for doing so, liable —
 - (i) to any disciplinary action under a written law; or
 - (ii) to be dismissed; or
 - (iii) to have his or her services dispensed with or otherwise terminated; or
 - (iv) for any breach of a duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person.

14 Detrimental action against informant etc., offence

(1) A person must not take or threaten to take detrimental action against another because anyone has made, or intends to make, a disclosure of public interest information under this Act.

Penalty: \$24 000 or imprisonment for 2 years.

(2) A person who —

- (a) attempts to commit an offence created by subsection (1); or
- (b) intending that an offence created by subsection (1) be committed, incites another person to commit that offence,

commits an offence.

Penalty: \$24 000 or imprisonment for 2 years.

15A Injunction etc. as to detrimental action

- (1) A person who believes that detrimental action has been taken or may be taken against him or her in reprisal for a disclosure of public interest information under this Act may apply to the Supreme Court for an order or injunction under this section.
- (2) If the Supreme Court, on an application under subsection (1), is satisfied that a person has taken or intends to take detrimental action against the applicant in reprisal for a disclosure of public interest information under this Act, the Court may —
 - (a) order the person who took the detrimental action to remedy that action; or
 - (b) grant an injunction in any terms the Court considers appropriate.
- (3) The Supreme Court, pending the final determination of an application under subsection (1), may —
 - (a) make an interim order in the terms of subsection (2)(a); or
 - (b) grant an interim injunction.

15 Act of victimisation defined; remedies for

- (1) A person who takes or threatens to take detrimental action against another because or substantially because anyone has made, or intends to make, a disclosure of public interest information under this Act commits an act of victimisation which may be dealt with as a tort.
- (2) Proceedings in tort under subsection (1) may be taken against the perpetrator of an act of victimisation or any employer of the perpetrator.
- (3) In proceedings against the employer of the perpetrator of an act of victimisation, it is a defence for the employer to prove that the employer —
 - (a) was not knowingly involved in the act of victimisation; and
 - (b) did not know and could not reasonably be expected to have known about the act of victimisation; and
 - (c) could not, by the exercise of reasonable care, have prevented the act of victimisation.
- (4) An act of victimisation under this Act may be dealt with under the *Equal Opportunity Act 1984* as if it were an act that was unlawful under section 67 of that Act but, if the victim commences proceedings in a court under subsection (1), he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* because of the act and, conversely, if the victim lodges a complaint under that Act because of the act, he or she cannot subsequently commence proceedings under subsection (1) because of the act.
- (5) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (6) Despite any other provision of this Act, this section has no retrospective operation and no proceeding may be taken under this section in relation to an act of victimisation that occurred before the commencement of this Act.

16 Disclosure of identity of informant etc. restricted

(1) A person must not make a disclosure (an *identifying disclosure*) of information that might identify or tend to identify anyone as a person who has made an appropriate disclosure of public interest information under this Act unless —

- (a) the person who made the disclosure of public interest information consents to the disclosure of information that might identify or tend to identify him or her; or
- (b) it is necessary to do so having regard to the rules of natural justice; or
- (c) it is necessary to do so to enable the matter to be investigated effectively; or
- (d) the disclosure is made in accordance with an order of a court or any other person or body having authority to hear, receive and examine evidence; or
- (e) *deleted*
- (f) the identifying disclosure is made in accordance with section 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

Penalty: \$24 000 or imprisonment for 2 years.

(2) A reasonable time before making a disclosure in the circumstances described in subsection (1)(b) or (c), the person making the identifying disclosure must take all reasonable steps to advise the person whose identity is to be disclosed —

- (a) that the disclosure is to be made; and
- (b) the reason for the disclosure being made.

(3A) Subsection (2) does not apply in respect of a person who made an anonymous disclosure.

(3) A person must not make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom a disclosure of public interest information has been made under this Act (*identifying information*) unless —

- (a) the person in respect of whom the disclosure of public interest information has been made consents to the disclosure of information that might identify or tend to identify him or her; or
- (b) it is necessary to do so to enable the matter to be investigated effectively; or
- (c) it is necessary to do so in the course of taking action under section 9(1)(a) to (c); or
- (d) there are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property; or
- (e) the disclosure is made in accordance with an order of a court or any other person or body having authority to hear, receive and examine evidence; or
- (f) *deleted*
- (g) the disclosure is made in accordance with section 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

Penalty: \$24 000 or imprisonment for 2 years.