

Whistleblowing

Shine Lawyers' team of Executive Employment and Partnerships experts are highly experienced in the complex area of whistleblowing, having acted for many brave individuals who have spoken out about wrongdoing. We understand the dilemmas that whistleblowers face, and how to best leverage the law to protect these individuals.

Whistleblowing Laws in Australia

In Australia, while public sector whistleblowers have had employment protections for some time, private sector employees have been significantly exposed. This is now changing.

The scale of misconduct and cover-ups revealed by Royal Commissions into Abuse, Banking and Aged Care have shown how crucial it is that employees are empowered to speak out to report wrongdoing without fear of reprisals, and protected from any retaliation. Parliament have responded with significant but highly complex, new whistleblower protections for certain segments of the private sector.

The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth), ("the Act") has expanded the category of people who are considered eligible whistleblowers. These now include not only current and former employees and officers of companies and other regulated entities, but also their:

- Suppliers
- Business associates
- Relatives or dependents.

If you do not fit into these categories, legal support may still be available to you.

How are whistleblowers protected by these new laws?

The Act protects whistleblowers from retaliation for blowing the whistle, as well as protecting their identities. It is unlawful to punish whistleblowers with any civil, criminal or administrative penalty for blowing the whistle, so employees can't be disciplined or dismissed for doing so, nor can suppliers' contracts be terminated.

If your employment is terminated because you blew the whistle, the new laws provide for reinstatement or financial compensation, to reflect your realistic career losses. If you are still in employment, there is a wider range of potential remedies, including a court order for your employer to stop any detrimental victimisation, as well as an apology. Criminal sanctions, including prison sentences and large fines, are also potential consequences.

Protections under the new laws

To ensure that you are covered by the Act, you must "blow the whistle" to an "eligible recipient" about a "disclosable matter". "Eligible recipients" who are authorised to receive disclosures of information include:

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| • Officers | • ASIC |
| • Senior Managers | • APRA |
| • Auditors | • Other relevant regulators |
| • Actuaries | |

Companies may also appoint individuals to be designated whistleblowing reporting officers under their whistleblowing policies.



What is considered a “disclosable matter”?

The subject matter of what you are blowing the whistle about is of critical importance. You are required to have reasonable grounds to suspect that the information you are disclosing concerns misconduct, or an improper state of affairs or circumstances, to be sure of whistleblower protection.

This goes much further than unlawful activity, but does not include personal work-related grievances. Since disclosable matters are not closely defined, it is crucial to take advice on the specific circumstances in your case to understand how you can come within the protection of the new laws.

Can you blow the whistle anonymously?

This is one of the most important features of the new laws. Whistleblowers now have the right to remain anonymous if they choose. It can be a criminal offence to reveal the identity of a whistleblower without consent, or even to disclose information likely to lead to identification. This can potentially result in prison sentences or very high value fines.

When should you seek legal advice?

It is important to seek legal advice as early as possible to protect your position. In potential dismissal cases, it may be possible to take action to prevent dismissal if addressed quickly, however it is important to note that strict, and very short, time limits can apply in dismissal cases – in some cases within only 21 days.

How Shine can help

We are familiar with the risks, challenges and repercussions of whistleblowing. We apply this knowledge and experience to our advice, to help our clients raise the alarm in the best way possible to protect their interests, and we understand how best to take action to enforce an individual's rights when things go wrong.

Contact Us

To arrange a confidential discussion, please contact us via the details below.



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Samantha Mangwana is a legal expert with 15 years' experience. She has practised extensively in whistleblowing and other workplace cases, including discrimination and harassment, which have involved sensitive reputational and regulatory issues. Prior to working at Shine, Samantha was a Partner at leading firms in London advising individual senior executives and partners, predominantly from the legal and financial services sectors. Samantha has advised employers as well as individuals, which gives her a pragmatic insight into how to achieve optimal outcomes for her clients.