

## PricewaterhouseCoopers (Australia)

Australia has a new Whistleblower Protection Regime. Are you prepared?

## PricewaterhouseCoopers Sociedad Civil (Uruguay)

Law on employment promotion in the private sector for people with disabilities

# *PwC International Business Reorganisations Network – Monthly Legal Update*

## Edition 5, May 2019

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### *Welcome*

Welcome to the fifth edition of the PwC International Business Reorganisations (**IBR**) Network Monthly Legal Update for 2019.

The PwC IBR Network provides legal services to assist multinational organisations with their cross-border reorganisations. We focus on post-deal integration, pre-transaction separation and carve outs, single entity projects, and legal entity rationalisation and simplification as well as general business and corporate and commercial structuring.

Each month our global legal network brings you insights and updates on key legal issues multinational organisations.

We hope that you will find this publication helpful, and we look forward to hearing from you.

### *In this issue*

In our May 2019 issue:

- PricewaterhouseCoopers (Australia) reports on the introduction of a new whistleblower protection regime for the private sector; and
- PricewaterhouseCoopers Sociedad Civil (Uruguay) considers a new law on employment promotion in the private sector for people with disabilities.

### *Contact us*

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# PricewaterhouseCoopers (Australia) – Australia has a new Whistleblower Protection Regime. Are you prepared?

### At a glance

On 19 February 2019, Parliament passed the *Treasury Laws Amendment (Enhancing Whistleblowers Protections) Bill 2018 (Bill)* which introduces a new and far reaching whistleblower protection regime for the private sector.

The new regime applies to all companies, banks, general insurers, life insurers, superannuation entities and other prescribed regulated entities. If the Bill receives Royal Assent by 1 April 2019, the legislation will come into operation as early as 1 July 2019.

Public and large proprietary companies will need to introduce or update whistleblower policies to meet the new legislative requirements. Additional safeguards will also need to be applied to internal and external investigations, having regard to the increased penalties for non-compliance with confidentiality and victimisation provisions.

### In detail

Australia's whistleblower protection laws have long suffered criticism for being fragmented and narrowly-drafted, leaving whistleblowers feeling vulnerable rather than protected. The new regime aims to remedy the shortcomings of the former regime, improving protections offered to whistleblowers and harmonising the laws with those in the public sector.

The reforms affect all public and proprietary companies in respect of offences or misconduct in the corporate, financial services, banking, insurance, superannuation and taxation sectors, and strengthens the protections and remedies available to those who blow the whistle on private sector wrongdoing.

The new regime consolidates the various private sector whistleblower regimes into the *Corporations Act 2001* (Cth), and creates separate but largely consistent protections within the *Taxation Administration Act 1953* (Cth).

The new whistleblower protection regime has a number of key elements – most importantly, it:

- a **requires public and large proprietary companies to establish a readily-available whistleblower policy** that is compliant with the legislation within 6 months after the legislation commences;
- b **significantly expands the classes of people eligible for whistleblower protection after making a disclosure** to include both current and former company officers, employees, contractors and suppliers, plus their associates and specified family members;
- c **broadens the types of wrongdoing that qualify for protection** to include conduct that represents a danger to the public or financial system, suspected contraventions of certain federal laws, and misconduct or an improper state of affairs or circumstances in relation to a regulated entity (but excludes personal work-related grievances);

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- d **expands who can receive a protected whistleblower's disclosure** to include designated individuals within a company, regulators, law enforcement bodies, auditors, actuaries and lawyers;
- e **improves a whistleblower's access to compensation** by reversing the burden of proof once the whistleblower has pointed to evidence suggesting a reasonable possibility that a defendant has engaged in conduct that caused (or threatened to cause) detriment, and providing costs protection for whistleblower compensation claims; and
- f **introduces enhanced protections for whistleblowers** by:
  - i replacing the current 'good faith' test with a requirement that the whistleblower has objectively reasonable grounds to suspect wrongdoing;
  - ii allowing anonymous disclosures;
  - iii increasing penalties for individuals (up to \$200,000) and corporates (up to \$1 million respectively) for disclosing a whistleblower's identity or causing detriment to a whistleblower;
  - iv strengthening criminal and/or civil immunities for whistleblowers;

- v providing an avenue for public interest and emergency disclosures of misconduct to Parliament and/or journalists in some circumstances, including where a company has not acted on a qualifying disclosure within 90; and
- vi expanding the orders that may be made by a court in favour of a person who has suffered loss, damage, or injury as a result of detrimental conduct, including against a body corporate that breaches an *existing* duty to prevent third parties from causing detriment to the whistleblower.

These changes form the first wave of reform and more reforms are to follow. Some of the more controversial reforms include the establishment of a whistleblowing oversight agency and the introduction of a US-style "bounty" rewards system, under which, for example, whistleblowers can receive up to 30% of any fine levied by the US Securities Exchange Commission above US\$1 million for the disclosure of a violation of anti-corruption laws.<sup>1</sup> The Bill requires a post-implementation review of the law five years after the legislation commences.

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<sup>1</sup> Section 21F of the Securities Exchange Act.

Unlike the position in the UK<sup>2</sup>, a protected disclosure may be made in Australia without the whistleblower reasonably believing that the disclosure is in the public interest.

## The takeaway

Public and large proprietary companies need to implement a compliant whistleblower policy in accordance with the new legislation.

Now is the best time to:

- a review and revise your existing whistleblower policy so that it meets the letter and spirit of the new regime;
- b ensure your avenues for reporting improper conduct are robust and operate effectively in practice;
- c develop an anonymous reporting system;
- d enhance measures to protect the identity of whistleblowers; and
- e train relevant personnel to adequately respond to potential whistleblower scenarios.

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Companies should expect greater whistleblowing activity as a consequence of the new legislation. While this represents a risk management issue, it also represents an opportunity for companies to enhance their corporate culture and demonstrate to regulators, investors and customers alike, that they are committed to accountability and integrity.

An effective whistleblower protection policy can facilitate self-reporting of corporate wrongdoing to regulatory authorities, which can result in favourable outcomes, in the form of deferred prosecutions or leniency in respect of any fines payable.

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# ***PricewaterhouseCoopers Sociedad Civil (Uruguay) – Law on employment promotion in the private sector for people with disabilities***

### ***At a glance***

A new law has been announced on employment promotion in the private sector for people with disabilities which seeks to give a legislative solution to the issue of labor insertion.

Since a specific effective date has not been stated, the law will go into effect 10 days after its publication in the Official Journal.

### ***In detail***

#### **1. Scope of application**

The law will apply to employers within the private sector (with at least 25 permanent employees) who recruit workforce as of the date the law goes into effect.

These employers shall recruit people with disabilities that meet the requirements and expectations of the position pursuant to the percentages of disabled employees set forth by the law.

#### **2. Disability**

The concept of disability is defined in the Law of Comprehensive Protection for People with Disabilities No. 18,651. As per section 2 thereof, a person is considered to be disabled when they suffer from or have a permanent or long-term functional, physical disorder (motor, sensory, organic, visceral) or mental disorder (intellectual and/or psychological) which, taking into account their age and social environment, may significantly interfere with their family, social, educational or labor insertion.

These employees will be entitled to all rights and subject to all obligations foreseen in labor regulations.

#### **3. Percentages of disabled employees**

The **first year** the law is in force:

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- a employers with over 500 employees: 3%;
- b employers with over 150 employees but less than 500: 2%; and
- c employers with over 50 employees but less than 150: 1%.

The **second year** the law is in force:

- a employers with over 500 employees: 4%;
- b employers with over 150 employees but less than 500: 3%;
- c employers with over 50 employees but less than 150: 2%; and
- d employers with less than 50 employees but more than 25: 1.5%.

The **third year** the law is in force:

- a employers with over 500 employees: 4%;
- b employers with over 150 employees but less than 500: 3.5%;
- c employers with over 50 employees but less than 150: 3%; and
- d employers with less than 50 employees but more than 25: 2%.

**After three years** the law has been in force, the recruitment percentage of disabled people must be 4% in all cases.

### 4. Sliding scale of employer contributions

Employers shall take the following scale as a reference in order to make retirement contributions before Social Security Office corresponding to disabled people who have been recruited to work in the private sector after the law became effective:

- a 25% of the contribution over the first year of work;
- b 50% of the contribution over the second year of work;
- c 75% of the contribution over the third year of work; and
- d 100% of the contribution after completing three years of work.

Nonetheless, certain details should be taken into consideration.

### 5. Registry, dismissal and special leave

Among other provisions, the following have been established:

- a People with disabilities who wish to obtain the benefits foreseen in the law must be listed in the National Registry of Disabled People.
- b A special dismissal for disabled employees is introduced. It will be equivalent to six monthly wages plus the applicable legal redress in case the employer fails to adequately account for the reason of dismissal.
- c People with disabilities may request special leave without pay for a maximum continuous or discontinuous period of three months provided it is requested on the basis of their disability.

### 6. Preferential treatment and benefits

Employers who list in the registry—which for this purpose will be under the authority of the Ministry of Labor and Social Security— are entitled to benefits foreseen in the law such as preferential treatment, returns on accessibility works, incentives, etc.

### 7. Accessibility

All employers must ensure and carry out the necessary construction works in accordance with applicable law in order for the employee to fully develop their potential.

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### **8. Labor assistance**

It is foreseen that in case people with disabilities need assistance in performing their duties, they may request so to the employer and the employer has the obligation of authorizing it. Although much has been settled in connection with this issue, it is still subject to the rules and regulations.

### **9. Penalties**

Violating the Law of General Work Inspection and Social Security (IGTSS for its acronym in Spanish) will result in the enforcement of applicable penalties as provided by Decree No. 186/004 (labor violations).

In the event employers fail to comply with the terms set forth by the law, they shall inform their situation to the IGTSS Department and submit a plan of action to revert this.

Having done so, they will be granted a maximum grace period of 12 months.

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