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 **NORTON ROSE FULBRIGHT**

Updates to Whistleblowing law and implementation

URGENT ACTION REQUIRED



Whistleblowing policies will be mandatory for public and large proprietary companies on 1 January 2020. We are advising our clients that it is prudent to have a compliant policy in place and effectively implemented BEFORE 1 July 2019. Failure to achieve successful implementation now has serious legal consequences. An effectively implemented, compliant policy will help you to:

- *Protect Whistleblowers*
- *Reduce the risk of civil and criminal liability*
- *Inform, empower and protect senior management*
- *Obtain advice while retaining legal privilege*

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see nortonrosefulbright.com/legal-notices.

The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.

What is happening?

Australian Whistleblowing Laws are changing. From 1 July 2019 all Australian companies and their employees will be exposed to potential civil and criminal liability under new enhanced Whistleblowing laws.

While public and large proprietary companies must have a policy in place by **1 January 2020**, the new Whistleblowing laws will apply from **1 July 2019** and courts are specifically permitted to take into account the existence of, and implementation of any Whistleblowing policy when making an order under the new legislation.

It is our view that the failure to have a compliant Whistleblowing policy, and to effectively implement that policy by 1 July 2019, will expose our clients to unnecessary risk.

Does it apply to me?

Almost certainly. The new laws apply to all Regulated Entities. Regulated Entities include corporations, banks, insurers and superannuation providers.

What is my exposure?

Failure to protect Whistleblowers as required, by both having a compliant whistleblowing policy **and** successfully implementing that policy, will have serious legal consequences. Successful implementation of up to date policies will **reduce the risk of civil and criminal liability**.

Unauthorised naming and victimisation of Whistleblowers and the failure to have policies in place (if required) will carry civil and criminal liability, with terms of imprisonment of up to 2 years, and civil penalties for individuals (up to \$1.05mn) and corporations (up to \$525mn).

Why is it important?

Expectations of corporate Australia are changing, with a greater focus on honesty, integrity and fairness, and a decreasing focus on mere legal compliance (which is now regarded as a minimum requirement). Personal accountability is also on the rise, with individuals being held publicly and criminally responsible for corporate failings. **Failure to achieve successful implementation now has serious legal consequences.**

An effective Whistleblowing programme is not only an essential tool for the protection of Whistleblowers, it can also assist corporations in meeting these enhanced expectations by providing essential management information which in turn facilitates a better understanding of business issues. **An effective Whistleblowing programme informs, empowers and protects those who bear responsibility for governance and compliance.**

Why Norton Rose Fulbright?

Seamless Integration of Legal and Risk: Our Whistleblowing Team brings a multidisciplinary approach, combining Employment and Regulatory lawyers with Consultants from our Risk Advisory team who have direct industry experience, to walk you through every step of the way.

Global insight and experience: As a global firm, we draw on a depth of experience beyond Australia. We provide a comprehensive global whistleblowing advisory service. Clients can use our **Global Whistleblowing Guide**, which looks at both public and private sector laws in over 50 countries across the globe.

A tailored approach: Our approach and methodologies are tailored to ensure we achieve the best outcomes for our clients. We assemble teams with the right balance of skills to ensure solutions are robust, relevant and sustainable.

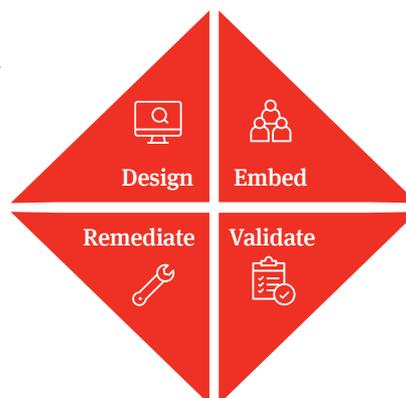
Deep industry expertise: Our teams bring together experts who have held senior roles within and consulted to major organisations in the sectors we advise. Recognised for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare.

Award Winning Employment Law service: A comprehensive Whistleblowing regime requires the support of a recognised employment law service to conduct investigations and provide advice when required, **while retaining legal privilege**. Norton Rose Australia's employment law team has significant experience in working with corporations to provide training to their employees, ensuring that those employees understand their obligations and potential personal liability. We can partner with you in providing that training or provide it directly to your employees. We regularly conduct investigations on behalf of private and public sector clients in relation to a range of matters arising from the workplace.

Whistleblowing Services

We advise on **Designing, Embedding, Validating** and **Remediating** local and international Whistleblowing programmes.

Our Lawyers and Risk Advisers have practical experience of implementing Whistleblowing programmes locally and across jurisdictions in a wide range of regulated and non-regulated industries and locations. In addition, our **recognised employment law** team provide essential services as required, including workplace **training**, conducting **investigations** and providing **employment law advice**, while retaining legal privilege.





Design Phase

We advise our clients throughout the design phase for a comprehensive Whistleblowing programme, advising on policy and process to ensure that Whistleblowing regimes are legally compliant and practically robust.

We help our clients to develop a Whistleblowing framework that not only meets the requirements of laws and regulations, but also maximises value for the organisation. With our strategic partners, we assist clients to produce anonymised management information that can be used to continually assess the evolving risk environment, improve risk infrastructure and inform responsible executives.

During the design phase we will consider how and when our clients should access legal advice in relation to Whistleblowing issues, and how this can be done while **retaining legal privilege**.

| Design | Service | Pricing |
|-------------|--|-------------------|
| Component 1 | Prepare and /or review Whistleblowing policy | \$5000 |
| Component 2 | Advise on the Whistleblowing reporting process, developing detailed process maps that outline each step in the assessment and escalation process This service includes 3 hours of lawyer time on our Whistleblowing Support Line | \$4500 |
| Component 3 | Arranging for third party support (NRF or our global Whistleblowing partner Whistle B) to receive reports and / or make initial assessments of reports for escalation | Tailored Approach |
| Component 4 | Analysing reports, preparing analysis and reporting for Boards, Accountable Persons and key decision makers | Tailored Approach |

Investigations and Employment Law Services

During the design phase we will consider how and when our clients should access legal advice in relation to Whistleblowing issues, and how this can be done while retaining legal privilege.

| Design | Service | Pricing |
|-------------|---|-------------------|
| Component 1 | Investigations following Whistleblowing reports | Tailored Approach |
| Component 2 | Employment law advice in relation to Whistleblowing reports | Tailored Approach |



Embedding Phase

We advise our clients on embedding Whistleblowing into their culture, through comprehensive training and planned internal communications. Managing the tone from the top and empowering employees are key elements in implementing a successful Whistleblowing regime.

| Embed | Service | Pricing |
|-------------|---|---------|
| Component 1 | Employee training deck – preparing a training seminar for employees | \$3500 |
| Component 2 | Delivering training to employees | \$1500 |
| Component 3 | Cultural change support – advising on internal communications in support of the Whistleblowing regime | \$1500 |



Validation Phase

We review existing Whistleblowing regimes for compliance effectiveness and we advise on required improvements.

We have undertaken a number of exercises, materially reviewing and validating clients' Whistleblowing frameworks. We cover all elements of the end to end process, from the policy and procedures to governance, reporting Management Information, confidentiality, case management, root cause analysis and consequence management (including employment law issues).

| Validation | Service | Pricing |
|-------------|--|---------|
| Component 1 | Day rate for compliance effectiveness review by NRF Risk Advisory team member and report on findings | \$5000 |



Remediation Phase

We advise on changes required to be made to existing Whistleblowing regimes and we implement those changes.

| Remediate | Service | Pricing |
|-------------|--|-------------------|
| Component 1 | Implementing changes identified through the Validation Phase | Tailored Approach |



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Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

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