



LEGAL TORQUE

TRANSPORT LAW EXPERT GILLIAN BRISTOW PROVIDES SOUND ADVICE FOR OPERATORS

The Transport Industry and Whistleblowing Laws

As most transport businesses are probably aware, last year the National Heavy Vehicle Regulator launched the Heavy Vehicle Confidential Reporting Line. That telephone service is designed to allow participants in the industry and the supply chain to report operational safety issues relating to heavy transport. Information can be provided confidentially and those making calls can ask that their contact details are not released outside the NHVR.

Whistleblowing and its role in preventing and ending corporate misbehaviour has been a focus of Federal and State governments for some years. Earlier this year, the Federal Parliament passed changes to laws to provide additional protection to whistleblowers. These changes commence on July 1, 2019.

The legislative changes recognise that corporate misbehaviour can be concealed by a complex web of transactions and falsified or misleading corporate records, and that often wrongdoing only comes to light because of individuals who are prepared make disclosure, sometimes at great personal and financial risk.

Briefly, the new laws:

- expand protection for whistleblowers to current and former officers, employees, suppliers and relatives of these individuals
- allow disclosures to be made anonymously
- grant protection to a whistleblower who discloses suspected 'misconduct' or an 'improper state of affairs'
- remove the existing requirement that any disclosure be made in good faith
- in certain circumstances, allow protected disclosures to be made to the media, or to politicians
- increase the level of protection offered to whistleblowers, and the penalties that apply for causing detriment to a whistleblower. This extends to allowing whistleblowers to seek compensation, and allows courts to order injunctions, apologies and reinstatement of an employee.

The new laws provide for significant criminal and civil penalties for disclosing a whistleblower's identity or

causing detriment to a whistleblower. Detriment is very widely defined and includes dismissal, alteration of duties, harassment, intimidation and damage to a person's reputation.

It is very important that transport operators are aware of these laws, particularly in relation to maintaining the anonymity of any whistleblower.

In addition, public companies and large proprietary companies must have a written whistleblower policy in place by January 1, 2020. This policy must include information about:

- the protections available to whistleblowers, including protections under the legislation
- to whom disclosures that qualify for protection may be made, and how they may be made
- how the company will support whistleblowers and protect them from detriment
- how the company will investigate disclosures that qualify for protection
- how the company will ensure fair treatment of employees of the company who are mentioned in disclosures that qualify for protection, or to whom such disclosures relate
- how the policy will be made available to officers and employees of the company.

In addition to the protections provided for under the new whistleblower regime, a whistleblower is also entitled to protection under the Heavy Vehicle National Law. The HVNL provides that an employer may not dismiss an employee or otherwise prejudice their employment as a result of the employee helping a public authority in relation to a contravention of the HVNL or because of a complaint made to an employer, employee, union, public authority or law enforcement agency.

A breach of these provisions of the HVNL can result in the imposition of a penalty, an award of damages to the whistleblower and an order for reinstatement or re-employment of the employee.

To discuss any aspect of whistleblower protection, contact Gillian Bristow at gillian@bristowlegal.com.au