

House of Representatives

Supplementary Order Paper

Tuesday, 8 March 2022

Protected Disclosures (Protection of Whistleblowers) Bill

Proposed amendments

Jan Logie, in Committee, to move the following amendments:

Clause 18

Replace *clause 18* and the cross-heading above *clause 18* (page 14, lines 13 to 18) with:

Obligation to support discloser and to not retaliate or treat less favourably

18 Obligation to support discloser and to not retaliate or treat less favourably

- (1) Employers must actively support a discloser who is an employee: *see* **section 18B**.
- (2) Employers must not retaliate against a discloser who is an employee: *see* **section 19**.
- (3) A person must not treat another less favourably because of a protected disclosure: *see* **section 20**.

18A Interpretation of terms used in sections 18 to 19

In **sections 18 to 19**,—

employee has the meaning given in section 6 of the Employment Relations Act 2000

employer has the meaning given in section 6 of the Employment Relations Act 2000

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Bill**

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independent support person means an appropriate person to support the employee who—

- (a) is employed or engaged by the employer; and
- (b) is not otherwise involved in the matters to which the disclosure relates

retaliate means—

- (a) doing any of the following:
 - (i) dismissing the employee;
 - (ii) refusing or omitting to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances;
 - (iii) subjecting the employee to any detriment or disadvantage (including any detrimental or disadvantageous effect on the employee's employment, job performance, or job satisfaction) in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment or disadvantage;
 - (iv) retiring the employee, or requiring or causing the employee to retire or resign;
- (b) organising to do anything described in **paragraph (a)**.

18B Active support

- (1) An employer must actively support the wellbeing of an employee who intends to make or has made a protected disclosure.
- (2) In order to comply with **subsection (1)**, an employer must take reasonable steps to support the mental health and wellbeing of the employee, including by—
 - (a) assessing any risk that the employee may be the subject of retaliation or less favourable treatment as described in **sections 19 and 20**;
 - (b) developing a support plan for the employee that identifies how any risks identified under **paragraph (a)** will be mitigated;
 - (c) providing the employee with access to an independent support person:

- (d) if a disclosure has been made, keeping the employee and the independent support person informed about any steps taken in relation to the disclosure.
- (3) The employer must actively support the wellbeing of the employee from the time when the employer becomes aware of the disclosure or intended disclosure.

Clause 19

Delete *clause 19(4)* (page 14, line 26 to page 15, line 11).

Explanatory note

This Supplementary Order Paper amends the Protected Disclosures (Protection of Whistleblowers) Bill. It requires employers to actively support the wellbeing of employees who make protected disclosures.