

The Whistleblowing APPG's inadequate criminal provisions

These are the criminal provisions of the APPG's Bill:

"22 Offence of subjecting a whistleblower to detriment

(1) A person who intentionally or recklessly submits such a person as is specified in section 3(2) to detriment shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;

(c) on conviction on indictment, to imprisonment for a term not exceeding 18 months or a fine, or both.

(3) In determining the sentence to be imposed upon conviction of a person of an offence under this Act the Court may treat as an aggravating factor that the victim was subjected to detriment for the reason of retaliation.

"23 Other Offences

(1) It is an offence for a person, in response to an information notice—

(a) to make a statement which that person knows to be false in any material respect; or

(b) recklessly to make a statement which is false in any material respect.

(2) Where a person has been served with an information notice, it is an offence for the person –

(a) to destroy or otherwise dispose of, conceal, block or (where relevant) falsify or otherwise modify all or any part of the information, document, equipment or material, or

(b) to cause or permit the destruction, disposal, concealment, blocking, falsification or modification of all or part of the information, document, equipment or material, with the intention of preventing the Office from being provided with or directed to, or examining all or any part of the information, document, equipment or material.

(3) It is a defence for a person charged with an offence under subsection

(2) to prove that the destruction, disposal, concealment, blocking, falsification or modification would have occurred in the absence of the person to whom the notice may have been given."

This is provision by the EU Whistleblowing Directive for dissuasive penalties:

1. Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons that: (a) hinder or attempt to hinder reporting;

(b) retaliate against persons referred to in Article 4;

(c) bring vexatious proceedings against persons referred to in Article 4;

(d) breach the duty of maintaining the confidentiality of the identity of reporting persons, as referred to in Article 16.

The Australian Corporations Act has provides criminal offences of whistleblower reprisal and breaching confidentiality

<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/protections-for-corporate-sector-whistleblowers/>