



WHISTLEBLOWER PROTECTIONS LEGISLATION

Application for ACC Churches

WHAT IS THE WHISTLEBLOWER PROTECTIONS REGIME?

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) came into effect on 1 July 2019, and introduced amendments to the *Corporations Act 2001* (Cth) (“the Act”). Those amendments have significantly expanded and strengthened the whistleblower protections that were already available under the Corporations Act.

The amendments were introduced to encourage whistleblowers to come forward and report serious misconduct or an improper state of affairs in relation to the financial affairs of a regulated entity, and to protect whistleblowers who do so.

WHO QUALIFIES FOR PROTECTION?

To qualify for protection under the regime, an ‘**eligible whistleblower**’ must make a ‘**qualifying disclosure**’.

A wide range of persons may be considered an ‘**eligible whistleblower**’ – the criteria set out in the Act includes most people with a connection to an organisation who may be in a position to observe or be affected by misconduct, and may face reprisals for reporting it.¹ This includes employees, officers, volunteers, and the spouse or relatives of such persons.

A ‘**qualifying disclosure**’ is where a whistleblower makes a disclosure of serious misconduct or an improper state of affairs. That disclosure may be made to ASIC, APRA, a legal practitioner, or an ‘eligible recipient’. An ‘eligible recipient’ includes an officer, senior manager or auditor of the organisation.²

For the purpose of the regime, serious misconduct or an improper state of affairs may include any of the following:

- Conduct that constitutes an offence against, or a contravention of, the Corporations Act, the ASIC Act, or other legislation that regulate financial affairs;
- Conduct that constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
- Conduct that represents a danger to the public or the financial system.³

¹ *Corporations Act 2001* (Cth), section 1317AAA.

² *Corporations Act 2001* (Cth), section 1317AAC.

³ *Corporations Act 2001* (Cth), section 1317AA(5).
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The regime does not apply to personal, work related grievances, unless those grievances concern serious misconduct or an improper state of affairs for the organisation.⁴

WHAT ENTITIES MUST COMPLY WITH THE WHISTLEBLOWER PROTECTIONS REGIME?

The whistleblower protections regime applies to companies registered under the Act. This includes all companies limited by guarantee, even those which are registered charities.

In addition, the whistleblower protections regime may apply to other corporate entities, including incorporated associations, if the association may be considered a 'trading or financial' corporation. An incorporated association may be considered a trading or financial **corporation if it engages in trading or financial activities to a significant degree.**

For example, a church may be considered trading organisations if it engages in buying or selling activities that generate revenue (whether or not the activity is carried out for profit) – this may include the operation of a bookstore, cafe or fundraising. There is no definitive threshold to what constitutes trading activities 'to a significant degree', and this determination will depend on the size of the organisation and the percentage of revenue derived from trading activities.

Further guidance on what entities must comply with the whistleblower protections regime can be found on ASIC's website here: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-protections-for-not-for-profit-organisations/#trading>

REQUIREMENT FOR WHISTLEBLOWER POLICY:

From 1 January 2020, **most** public companies are required to have a whistleblower policy, and to make that policy available to officers and employees.⁵ **This includes most companies limited by guarantee.** An exemption is available for registered charities that are considered a small or medium sized charity for ACNC reporting purposes (ie. a charity with consolidated annual revenue of less than \$1 million).⁶

Incorporated associations which are required to comply with the whistleblower protections regime by virtue of their status as a trading or financial corporation are **not** required to have a whistleblower policy (no matter their size). However, adopting a policy may help incorporated associations which are trading or financial corporations to comply with their obligations under the Act.

A whistleblower policy is required to include the following:

- Information about the protections available to whistleblowers;
- Information setting out to whom qualifying disclosures should be made, and how such disclosures should be made;
- Information about how the company will support whistleblowers and protect them from detriment;
- Information about how the company will investigate qualifying disclosures;
- Information about how the company will ensure fair treatment of employees who make a qualifying disclosure; and
- Information about how the policy will be made available to officers and employees.⁷

Despite the exemption from being required to adopt a whistleblower policy for small or medium charities, **all public companies (regardless of size) are required to comply with the whistleblower protections regime.** Implementing a whistleblower policy may assist small and medium charities which are public companies with their compliance obligations in this regard.

⁴ *Corporations Act 2001* (Cth), section 1317AADA.

⁵ *Corporations Act 2001* (Cth), section 1317A(1).

⁶ ASIC Corporations (Whistleblower Policies) Instrument 2019/1146.

⁷ *Corporations Act 2001* (Cth), section 1317A(5).

A policy template is available for all ACC Churches which are required to have a whistleblower policy. This template policy sets out a minimum standard of compliance with the whistleblower protections regime.