

LGAQ Whistleblower Policy

1. Purpose

The LGAQ is committed, through our organisational values (Trusted, Accountable, Empowered), to operating at the highest standards of conduct and ethical behaviour in all activities and to promoting and supporting a culture of honest and ethical behaviour, compliance and good corporate governance.

This policy will assist to encourage the reporting of wrongdoing involving the LGAQ and outlines the protections provided under the Corporations Act so that persons who make a report may do so confidentially and without fear of intimidation, disadvantage or reprisal.

2. Scope

This policy applies to all officers and employees of the LGAQ.

The persons referred to in section 4.2 of this policy may also make a report under this policy.

3. Definitions

In this policy:

- “ASIC” means the Australian Securities and Investments Commission;
- “APRA” means the Australian Prudential Regulation Authority;
- “Corporations Act” means the *Corporations Act 2001* (Cth);
- “Part 9.4AAA” means Part 9.4AAA of the Corporations Act;
- “Reportable Conduct” means a matter that may be reported under section 4.1 of this policy; and
- the terms “associate”, “eligible whistleblower”, “journalist”, “misconduct” “officer”, “personal work-related grievance”, “related body corporate”, “relative” and “senior manager” have the meanings given in the Corporations Act.

4. Policy Principles

4.1. Reportable Conduct

You may report information under this policy if you have reasonable grounds to suspect that the information:

- (a) concerns misconduct or an improper state of affairs or circumstances in relation to LGAQ or a related body corporate of LGAQ; or
- (b) indicates that LGAQ, an officer or employee of LGAQ, a related body corporate of LGAQ, or an officer or employee of the related body corporate has engaged in conduct that:

- constitutes an offence against, or a contravention of, a provision of any of the following:
 - the Corporations Act;
 - the *Australian Securities and Investments Commission Act 2001* (Cth);
 - the *Banking Act 1959* (Cth);
 - the *Financial Sector (Collection of Data) Act 2001* (Cth);
 - the *Insurance Act 1973* (Cth);
 - the *Life Insurance Act 1995* (Cth);
 - the *National Consumer Credit Protection Act 2009* (Cth);
 - the *Superannuation Industry (Supervision) Act 1993* (Cth); or
 - an instrument made under an Act referred to above;
- constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- represents a danger to the public or the financial system.

This includes conduct which:

- Is dishonest, fraudulent or corrupt (including bribery);
- Is illegal activity such as theft, violence, harassment or intimidation or any other activity that breaches state or federal law;
- Is unethical or in breach of the LGAQ Code of Conduct or Corporate Governance Charter;
- Is potentially damaging to the LGAQ, an employee or related entity (including financial, safety, environmental or reputational damage);
- Is either bullying, discriminatory, harassing or abusive in nature; or
- Victimises someone for reporting Reportable Conduct.

This policy extends to Reportable Conduct undertaken prior to the commencement of this policy and is not limited to the above examples.

However, this policy does not extend to information disclosed to the extent that it:

- (a) concerns a personal work-related grievance of the discloser; and
- (b) does not concern a contravention, or alleged contravention, of section 1317AC of the Corporations Act that involves detriment caused to the discloser or a threat made to the discloser.

4.2. Protected Disclosures

Disclosure that is protected by Part 9.4AAA is a report of Reportable Conduct made by an eligible whistleblower to one of the persons specified in section 4.3 of this policy. An individual is an eligible whistleblower if they are (or have been):

- (a) an officer of LGAQ;
- (b) an employee of LGAQ;
- (c) an individual who supplies services or goods to LGAQ (whether paid or unpaid);
- (d) an employee of a person that supplies services or goods to LGAQ (whether paid or unpaid);
- (e) an individual who is an associate of LGAQ;

- (f) a relative of an individual referred to in any of the above categories in paragraphs (a) to (e) (i.e. a spouse, parent or remoter lineal ancestor, child or remoter issue, or brother or sister of the person); and
- (g) a dependent of an individual referred to in any of paragraphs (a) to (e) above, or of such an individual's spouse.

The protections available to qualifying whistleblowers under Part 9.4AAA include:

- confidentiality of the whistleblower's identity;
- protection from civil, criminal and administrative liability;
- protection against victimisation; and
- compensation.

For further details of the protections available to qualifying whistleblowers, refer to Part 9.4AAA (sections 1317AE to 1317ADA) and ASIC's Information Sheet 238 (INFO 238) issued on 1 July 2019. A copy of Information Sheet 238 is attached at Annexure A.

Similar protections are also available to qualifying tax whistleblowers under Part IVD, sections 14ZZW to 14ZZZAA of the *Taxation Administration Act 1953* (Cth). Annexure B contains information published by the Australian Taxation Office about the protections available to tax whistleblowers.

4.3. Making a Report

To qualify for protection under Part 9.4AAA, the disclosure of Reportable Conduct must be made to:

- ASIC;
- APRA;
- an officer of LGAQ or a related body corporate of LGAQ;
- a senior manager of LGAQ or a related body corporate;
- an auditor, or a member of an audit team conducting an audit of LGAQ or a related body corporate;
- an actuary of LGAQ or a related body corporate;
- a person authorised by LGAQ to receive disclosures that may qualify for protection under Part 9.4AAA*;
- a legal practitioner, for the purpose of obtaining legal advice or legal representation in relation to the operation of Part 9.4AAA; or
- if the conditions in section 1317AAD(1) or 1317AAD(2) of the Corporations Act regarding a public interest disclosure or an emergency disclosure have been satisfied, to a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a journalist.

*** At this time the LGAQ has not authorised any other person to receive protected disclosures. LGAQ encourages any disclosures to be made to the Chief Executive Officer. Should the Reportable Conduct relate directly to the Chief Executive Officer, LGAQ encourages disclosure to be made to the Board.**

A report may be made anonymously.

4.4. Investigation

The LGAQ will investigate all matters reported under this policy that qualify for protection under Part 9.4AAA as soon as is practicable following a disclosure. Where possible information on the progress and outcome of the organisation's actions will be provided to the reporter.

All investigations will be conducted in a fair and independent manner for all involved having regard to the Reportable Conduct and other circumstances contained within the disclosure.

4.5. Confidentiality

Under the Corporations Act it is an offence to disclose the identity, or information that is likely to lead to the identification, of a person who discloses information that qualifies for protection under Part 9.4AAA without the consent of the discloser. Severe penalties apply for breach of this legislation.

However, disclosure is permitted if it:

- is made to ASIC;
- is made to APRA;
- is made to a member of the Australian Federal Police; or
- is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of Part 9.4AAA.

Disclosure, other than disclosure of the identity of the whistleblower, is also permitted if:

- it is reasonably necessary for the purpose of investigating Reportable Conduct; and
- all reasonable steps are taken to reduce the risk that the whistleblower will be identified as a result of the disclosure.

The LGAQ will therefore make all efforts to keep all information, including the whistleblower's identity, confidential throughout the investigation process unless required by law to disclose information. LGAQ will also maintain confidentiality to ensure fair treatment of LGAQ's employees who are mentioned in disclosures that qualify for protection under Part 9.4AAA, or to whom such disclosures relate.

The whistleblower is required to keep all information confidential both during and after the completion of the investigation process.

5. Support

The LGAQ is committed to ensuring that whistleblowers are not subject to victimisation. Any allegations of conduct causing detriment or threats to cause detriment to a person related to a believed or suspected disclosure that qualifies for protection under Part 9.4AAA will be fully investigated and, if proven, would be considered a serious breach of the LGAQ Code of Conduct and subject to disciplinary action (including dismissal).

All employees can discuss support requirements with the Chief Executive Officer and/or the Manager Human Resources. Employees are encouraged to seek support from the Employee Assistance Provider – Lifeworks if deemed necessary.

Contact details for Lifeworks can be found at: <https://lgaqasn.sharepoint.com/knowledge-base/Pages/Staff-Benefits---Employee-Assistance-Program.aspx>

6. Related Legislation

- Corporations Act 2001
- Taxation Administration Act 2001
- Australian Privacy Act 1988
- Australian Privacy Principles

7. Policy Communication, Review and Amendment

This policy will be available on the LGAQ website and employee intranet. Communication of the policy will be provided to staff and officers of LGAQ:

- upon approval;
- as part of the corporate induction process for new staff and officers of the LGAQ; and
- following the approval of any amendments.

This policy will be approved by the LGAQ Board and reviewed as required. All amendments will be subject to Board approval.

8. Related Procedures

Related procedures can be found [Whistleblower Procedures](#) (via Promapp)

Annexure A

Special Protections under the Corporations Act



Whistleblower rights and protections

Whistleblowers play an important role in identifying and calling out misconduct and harm to consumers and the community. To encourage whistleblowers to come forward with their concerns and protect them when they do, the *Corporations Act 2001* (Corporations Act) gives certain people legal rights and protections as whistleblowers.

This information sheet (INFO 238) explains:

- › [who is a whistleblower under the law](#)
- › [how a whistleblower can access the legal rights and protections](#)
- › [what protections are available to whistleblowers under the law](#)
- › [when the whistleblower protections may not be available](#)

We value the people from inside companies and organisations who report potential misconduct or breaches of the law. We appreciate that these whistleblowers can find themselves in difficult and stressful circumstances, and may risk their careers or even their personal safety. We take the concerns whistleblowers raise with ASIC seriously.

For further information on ASIC's role in relation to whistleblowers, see Information Sheet 239 *How ASIC handles whistleblower reports* ([INFO 239](#)).

Am I a whistleblower?

Criteria for protection as a whistleblower under the law

You can access the legal rights and protections for whistleblowers in the Corporations Act if you meet the definition of an 'eligible whistleblower'.

These criteria seek to include most people with a connection to a company or organisation who may be in a position to observe or be affected by misconduct and may face reprisals for reporting it. These people can access the rights and protections in the law from when they report misconduct. The protections also extend to the spouses and relatives of these people.

Whistleblowers can provide their name and contact details when they report. They can also report anonymously.

The criteria are set out in [Table 1](#). There is no formal registration process for whistleblowers; the protections apply to anyone who meets the criteria in Table 1.

Table 1: Criteria for protection as a whistleblower

Criteria	The law requires
Your role	<p>You must be a current or former:</p> <ul style="list-style-type: none">• employee of the company or organisation your disclosure is about, or a related company or organisation• officer (usually that means a director or company secretary) of the company or organisation your disclosure is about, or a related company or organisation• contractor, or an employee of a contractor, who has supplied goods or services to the company or organisation your disclosure is about, or a related company or organisation. This can be either paid or unpaid, and can include volunteers• associate of the company or organisation, usually a person with whom the company or organisation acts in concert• trustee, custodian or investment manager of a superannuation entity, or an officer, employee, or a goods or service provider to a trustee, custodian, investment manager, or• spouse, relative or dependant of one of the people referred to above. <p>While you must hold or have held one of these roles to access the protections, you do not have to identify yourself or your role, and you can raise your concerns anonymously.</p>
Company or organisation your disclosure is about	<p>The organisation your disclosure is about must be:</p> <ul style="list-style-type: none">• a company• a bank• a provider of general insurance or life insurance• a superannuation entity or a superannuation trustee, or• an incorporated association or other body corporate that is a trading or financial corporation. This includes not-for-profit organisations that trade in goods or services, lend or borrow money, or provide other financial services, and their trading or financial activities make up a sufficiently significant proportion of their overall activities. Not all not-for-profit organisations are subject to the whistleblower protections.

Criteria	The law requires
Who you make the disclosure to	<p>You must make your disclosure to:</p> <ul style="list-style-type: none"> a director, company secretary, company officer, or senior manager of the company or organisation, or a related company or organisation an auditor, or a member of the audit team, of the company or organisation, or a related company or organisation an actuary of the company or organisation, or a related company or organisation a person authorised by the company or organisation to receive whistleblower disclosures ASIC or the Australian Prudential Regulation Authority (APRA), or your lawyer. <p>While you must make your disclosure to one of these people or organisations, you can raise your concerns anonymously.</p>
Subject of your disclosure	<p>You must have reasonable grounds to suspect that the information you are disclosing about the company or organisation concerns:</p> <ul style="list-style-type: none"> misconduct, or an improper state of affairs or circumstances. <p>This information can be about the company or organisation, or an officer or employee of the company or organisation, engaging in conduct that:</p> <ul style="list-style-type: none"> breaches the Corporations Act breaches other financial sector laws enforced by ASIC or APRA breaches an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months, or represents a danger to the public or the financial system. <p>'Reasonable grounds' means that a reasonable person in your position would also suspect the information indicates misconduct or a breach of the law.</p> <p>There are additional protections if your concerns relate to matters in the public interest or an emergency (see Table 2 or Table 3).</p>

Whistleblower reports to a journalist or parliamentarian

The Corporations Act protects you if you make a whistleblower report internally within the company or organisation or externally to the company's or organisation's auditor, actuary, or authorised whistleblower complaints service or hotline, or to ASIC or APRA as regulators.

The protections can also apply to you if you make a whistleblower report to a journalist or a member of the Commonwealth Parliament or a state or territory parliament (parliamentarian). However, this is only in certain limited circumstances, which are set out in [Table 2](#) (for reports of matters in the public interest) and [Table 3](#) (for reports of emergencies). If you disclose your concerns to the public in another way, these protections do not apply.

Table 2: Public interest disclosures

Criteria	The law requires
Previous report	You must have previously made a report to ASIC or APRA that satisfies the criteria in Table 1 .
90 days	At least 90 days have passed since you reported your concerns to ASIC or APRA, and you do not have reasonable grounds to believe that action to address your concerns is being or has been taken.
Public interest	You have reasonable grounds to believe that reporting your concerns to a journalist or parliamentarian would be in the public interest.
Written notice to ASIC or APRA	After 90 days from when you reported to ASIC or APRA, you give ASIC or APRA a written notice that includes sufficient information to identify your earlier report and states your intention to make a public interest disclosure. This could be by contacting the ASIC officer who considered your concerns and quoting the reference number of your case.
Journalist or parliamentarian	You report your concerns about misconduct or an improper state of affairs or circumstances or a breach of the law to a journalist or a parliamentarian. The extent of the information disclosed is no greater than is necessary to inform the recipient about your concerns.

Table 3: Emergency disclosures

Criteria	Requirement
Previous report	You must have previously made a report to ASIC or APRA that satisfies the criteria in Table 1 .
Emergency	You have reasonable grounds to believe that the information in your report concerns substantial and imminent danger to the health or safety of one or more people or to the natural environment.
Written notice to ASIC or APRA	You give ASIC or APRA a written notice that includes sufficient information to identify your earlier report and states your intention to make an emergency disclosure. This could be by contacting the ASIC officer who considered your concerns and quoting the reference number of your case.
Journalist or parliamentarian	You report your concerns about the substantial or imminent danger to a journalist or parliamentarian. The extent of the information disclosed is no greater than is necessary to inform the recipient about the substantial and imminent danger.

We communicate with people who report misconduct to ASIC, but we may not be able to tell you what specific action we may take in response to your report: see Information Sheet 152 *Public comment on ASIC's regulatory activities* ([INFO 152](#)). Generally, we will not respond to your notice of your intended public interest disclosure or emergency disclosure unless we consider it may affect action we are pursuing.

In addition, if your report to ASIC about misconduct by a company or organisation refers to matters that fall within the responsibilities of another regulator or law enforcement agency, we will generally encourage you to directly contact the other regulator or agency. We may not be able to inform you of the actions that may be taken by the other regulator

or agency, and we would encourage you to contact them directly for an update if you are considering a public interest disclosure.

For further information, see [INFO 239](#).

How can I access the whistleblower protections?

Reporting your concerns to a company or organisation

If you believe you are a whistleblower with information about misconduct or potential breaches of the law within a company or organisation, you access the whistleblower rights and protections when you report or disclose your concerns.

You can report your concerns internally to an officer, senior manager or a person the company or organisation has authorised to receive whistleblower reports. You are covered by the whistleblower protections when you make your report to a person holding one of these roles, and may also be covered when you could make your report: see '[Protections for whistleblowers from detriment](#)'.

Generally, an 'officer' includes a director or company secretary of a company or organisation. A 'senior manager' is a person other than a director or company secretary who makes, or participates in making decisions that:

- affect the whole, or a substantial part of the business of the company or organisation, or
- have the capacity to significantly affect the company's or organisation's financial standing.

This will generally be senior executives within a company or organisation and may include chief executive officers, chief financial officers, chief operating officers, and chief risk officers, as well as public officers of charities or not-for-profit organisations.

You can also report your concerns externally, to the company's or organisation's auditor or actuary, or a service provider that the relevant company or organisation has authorised to provide a whistleblower complaints service or hotline.

Companies and organisations may prefer you to use the whistleblower complaints service or hotline they have established, rather than reporting to other people holding the roles mentioned above, to help ensure the company or organisation becomes aware of your concerns and can address them promptly. However, you will still be able to access the whistleblower protections if you report to a person holding one of these roles. These roles are also listed in [Table 1](#).

You can report your concerns anonymously and still access the whistleblower protections.

Reporting your concerns to regulators

We appreciate receiving reports from whistleblowers. Whistleblowers provide ASIC with important information about misconduct by companies and organisations. You are covered by the whistleblower protections if you report your concerns to ASIC, even if you have not first raised your concerns internally. You can lodge a report through our [online misconduct reporting form](#) or by [writing to ASIC](#).

Further information about ASIC's handling of whistleblower reports, our enforcement approach, and how we deal with reports of misconduct is available in:

- [INFO 239](#)
- Information Sheet 151 *ASIC's approach to enforcement* ([INFO 151](#))
- Information Sheet 153 *How ASIC deals with reports of misconduct* ([INFO 153](#))

You can report your concerns to ASIC anonymously; however, we will not be able to follow up with you for further information or tell you what steps we may take based on your information. You will still qualify for the whistleblower protections.

If your report is about matters within APRA's responsibilities, you may wish to raise your concerns directly with APRA. The whistleblower protections also apply to reports from whistleblowers made directly to APRA. For guidance on providing information on institutions APRA regulates, see [APRA's webpage on whistleblowing](#).

Getting advice

If you believe you may be a whistleblower or are unsure about what protections or rights to compensation may apply to you, it is important to seek legal advice. We are not able to give personal legal advice and can only provide general information on these issues.

Only a properly accredited legal practitioner who understands your circumstances can give you legal advice. This is especially important if you are thinking of acting on the rights the whistleblower protections give you.

How does the Corporations Act protect me as a whistleblower?

The Corporations Act contains certain protections for whistleblowers who meet the criteria in the tables above, including:

- › [protection of information provided by whistleblowers](#)
- › [protections for whistleblowers against legal action](#)
- › [protections for whistleblowers from detriment](#)

Protection of information provided by whistleblowers

Company or organisation

You can ask the company or organisation that receives your whistleblower report to keep your identity, or information that is likely to lead to your identification, confidential.

Generally, companies and organisations that receive your report cannot disclose this information without your consent. However, they may report the information to ASIC, APRA, or the Australian Federal Police, or to a lawyer for advice about the whistleblower protections.

It is illegal for a person to reveal the identity of a whistleblower, or information likely to lead to the identification of whistleblower, outside of these circumstances. We can investigate allegations from a whistleblower that their confidentiality has been breached following their report.

In a company's or organisation's investigation of the concerns raised in your report, the company or organisation must take reasonable steps to ensure that information likely to lead to your identification is not disclosed without your consent. However, the company or organisation may face difficulties investigating or internally addressing or correcting the

misconduct unless you provide some approval for the company or organisation to use your information. If the company or organisation is obliged to have a whistleblower policy, its whistleblower policy must include information about how it will investigate your concerns. You may wish to understand the company's or organisation's investigation practices before making your report to the company or organisation.

Further information about whistleblower policies is available from Regulatory Guide 270 *Whistleblower policies* ([RG 270](#)).

ASIC

We must keep information provided by a whistleblower confidential. We may not disclose either the information or the identity of the whistleblower without the whistleblower's consent or unless that disclosure is specifically authorised by law. Further, we can resist producing documents to a court or tribunal where it may reveal a whistleblower's identity, unless a court or tribunal thinks it necessary or in the interests of justice.

You can find out more about how we protect information we receive by reading Regulatory Guide 103 *Confidentiality and release of information* ([RG 103](#)).

Protections for whistleblowers against legal action

The Corporations Act protects a whistleblower against certain legal actions related to making the whistleblower disclosure, including:

- criminal prosecution (and the disclosure cannot be used against the whistleblower in a prosecution, unless the disclosure is false)
- civil litigation (such as for breach of an employment contract, duty of confidentiality, or other contractual obligation), or
- administrative action (including disciplinary action).

If you are the subject of an action for making a whistleblower disclosure, you may rely on this protection in your defence.

This protection does not grant immunity to you for any misconduct that you were involved in that is revealed in the disclosure.

However, if you voluntarily self report your involvement in corporate misconduct, we will often take into account your cooperation when we consider the action we will take to pursue any wrongdoing and what remedies we will seek. For more information, see Information Sheet 172 *Cooperating with ASIC* ([INFO 172](#)).

Protections for whistleblowers from detriment

Taking action against people who cause or threaten detriment

The Corporations Act makes it illegal (through a criminal offence and civil penalty) for someone to cause or threaten detriment to you because they believe or suspect that you have made, may have made, or could make a whistleblower disclosure.

The criminal offence and civil penalty apply even if you have not made a whistleblower report, but the offender causes or threatens detriment to you because they believe or suspect you have or might make a report.

A person may be causing you detriment if they:

- dismiss you from your employment
- injure you in your employment
- alter your position or duties to your disadvantage
- discriminate between you and other employees of the same employer
- harass or intimidate you
- harm or injure you, including causing you psychological harm
- damage your property
- damage your reputation
- damage your business or financial position
- cause you any other damage.

The offence and penalty require that the detriment be the result of an actual or suspected whistleblower disclosure. In many cases, particularly in the context of private employment, there may be arguments about whether the conduct involved was victimisation as a result of the whistleblower disclosure or for some other reason.

We can investigate allegations that a person caused or threatened detriment to you, but we would need your assistance to investigate the claim. Any action we take may result in a penalty to the person but not necessarily any compensation.

Compensation

You can seek compensation through a court if you suffer loss, damage or injury for making your disclosure. If you are or were an employee and experienced detriment at work for reporting misconduct, the court may order the person causing you detriment or your employer to compensate you.

You can also pursue other remedies, such as:

- your employer reinstating you to your original position or a comparable position
- the court issuing an injunction to prevent or stop detrimental conduct
- the person, company or organisation that caused you detriment or threatened you with detriment apologising to you.

It is important to note that it is your responsibility to bring any such action for compensation. We strongly encourage you, if you believe you are a whistleblower, to seek independent legal advice about what remedies may be available to you if you suffer loss, damage, or injury. We are unable to give legal advice.

If you are unsuccessful in your claim for compensation for detriment against a person, company or organisation, you are protected from having to pay their legal costs (unless a court finds your claim to be vexatious or you acted unreasonably).

Do the whistleblower protections apply to me?

The whistleblower protections apply to people who meet the criteria in the tables above. There are certain exclusions from the protections for people who may otherwise meet some of the criteria above and who have observed or been affected by misconduct of a company or organisation.

If you fall into one of the following categories, you may not be covered by the whistleblower protections. Accordingly, we encourage you to seek your own legal advice about any other rights or remedies that may be available to you. These categories include:

- › [People experiencing employment disputes or a personal work-related grievance](#)
- › [Competitors](#)
- › [Customers or clients](#)

People experiencing an employment dispute or personal work related grievance

Report of a personal work-related grievance may not be covered

If you are a current or former officer, employee, or contractor of a company or organisation who has an employment dispute or work related grievance with the company or organisation, you may wish to report misconduct by the company or organisation about that work-related dispute. However, the whistleblower protections do not cover a report of misconduct solely about your personal work-related grievance.

Generally, a personal work-related grievance will include:

- an interpersonal conflict with another employee
- a decision about your employment, transfer, or promotion
- a decision about the terms and conditions of your employment
- a decision to suspend or terminate your employment or otherwise discipline you.

Instead, you may have rights and protections under employment or contract law. We encourage you to seek your own legal advice about how you can resolve your personal work-related grievance.

Report of significant, wider concerns about employment dispute may be covered

If you have a personal work-related grievance, you may still be able to access the whistleblower protections for a report about your treatment.

However, this is only if the report also raises significant implications for the company or organisation. For example, if the company's or organisation's treatment of you breaks employment or other laws, or suggests systemic misconduct beyond your own circumstances.

In addition, you can access the whistleblower protections if you suffer or are threatened with detriment for reporting your own circumstances or making a report to your lawyer.

Similarly, you may also access the whistleblower protections if you make a report about other misconduct you have observed or been affected by.

We encourage you to seek your own legal advice about whether you may be covered by the whistleblower protections and how you can resolve your personal work-related grievance.

Competitors

You may observe or be affected by misconduct of a competitor to your business, and wish to report the misconduct to the competitor's management or ASIC. This could include where your business suffers loss as a result of the competitor's misconduct, such as the competitor infringing on your intellectual property rights.

However, you cannot access the whistleblower protections, as these protections are targeted at insiders of companies or organisations. Instead, you may have rights and protections under other laws, such as intellectual property or tort.

We encourage you to report your concerns to ASIC if they relate to matters within our regulatory responsibilities. We also encourage you to seek your own legal advice about how you can resolve your dispute.

Customers and clients

If you are a customer or client of a company or organisation, you may also observe or be affected by the company's or organisation's misconduct. However, you are not able to access the whistleblower protections if you are not otherwise an insider to the company or organisation.

You may have other legal rights and remedies you can pursue against a company or organisation if you are affected by the company's or organisation's misconduct. We encourage you to report your concerns to ASIC if they relate to matters within our regulatory responsibilities. We also encourage you to seek your own legal advice about your personal disputes.

Where to find more information

Read:

- › [RG 103 Confidentiality and release of information](#)
- › [RG 270 Whistleblower policies](#)
- › [INFO 151 ASIC's approach to enforcement](#)
- › [INFO 153 How ASIC deals with reports of misconduct](#)
- › [INFO 172 Cooperating with ASIC](#)
- › [INFO 239 How ASIC handles whistleblower reports](#)

Read the whistleblower provisions of the [Corporations Act](#) (especially Part 9.4AAA) on the Federal Register of Legislation.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. Omission of any matter in this information sheet will not relieve a company or its officers from any penalty incurred by failing to comply with the statutory obligations of the Corporations Act.

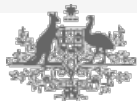
You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 238 (INFO 238)** issued on 1 July 2019.

Last updated: 14/11/2019 02:40

Annexure B

Special Protections under the Taxation Administration Act



Australian Government

Australian Taxation Office

Whistleblowers

- <https://www.ato.gov.au/General/Gen/Whistleblowers/>
- Last modified: 10 Dec 2019
- QC 58244

Tax whistleblowers

From 1 July 2019, there are new arrangements to better protect individuals who disclose information to us on tax avoidance behaviour and other tax issues.

Individuals are now better protected under the law when they disclose tax avoidance behaviour and other tax issues to us about an entity (including an individual) they are, or have been, in a relationship with.

Qualifying for protection

To qualify for protection as a tax whistleblower, certain conditions must be satisfied. You must:

- be, or have been, in a specific relationship with the entity you are reporting about, for example you are
 - an employee
 - a former employee
 - a dependant
 - a spouse
- report the entity to us or to an eligible recipient who is in a position to take appropriate action – this includes someone appointed by the entity the disclosure is about, for example, an internal auditor
- consider that the information will help us or the recipient perform their duties under taxation law.

If you don't qualify for protection as a tax whistleblower, you can still [make a tip-off](#).

Whether or not you are a tax whistleblower, we will make every effort not to disclose any information we have which would identify you. Alternatively, you may choose to report to us anonymously.

Information you can disclose

This law protects eligible tax whistleblowers who make a disclosure:

- to us if they consider the information may assist us to perform our duties under a taxation law in relation to the entity about which the disclosure is made
- to an eligible recipient if they
 - have reasonable grounds to suspect that the information they intend to provide indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the entity or an associate of the entity
 - consider the information may assist the eligible recipient to perform their duties under a taxation law in relation to the entity about which the disclosure is made.

Eligible recipients are generally internal to the entity about which the disclosure is made, or have a relationship with that entity that is relevant to its tax affairs such as a registered tax or BAS agent who provides services to the entity.

Example

Wayne is a labourer with a construction company. Wayne suspects that his employer is paying other employees in cash to avoid paying tax to the ATO. He discloses this to us using the tip-off form. Wayne qualifies for protection under tax whistleblower law as he is an employee of the company and he considers the disclosure may assist us to perform our duties under a tax law.

How tax whistleblowers are protected

Identity protection

If you are a tax whistleblower, it is illegal for someone to disclose your identity, or information that is likely to lead to your identification. However, you may consent to sharing your identity. If your identity needs to be disclosed to an authorised body, such as us or an auditor to assist in the investigation, the authorised body is required to treat the information you disclosed as confidential. They are also required to take all reasonable steps to reduce the risk that your identity will be revealed.

Your identity is protected in court proceedings. Your identity, or documentation that contains or is likely to uncover your identity, is not required to be disclosed to a court or tribunal. The exception to this is if the court thinks it is necessary for your identity to be revealed in the interests of justice.

Disclosures to your legal practitioner are protected

Your disclosure to your lawyer for the purposes of obtaining legal advice or representation in relation to tax whistleblower law is protected, even in the event where you do not qualify to be an eligible tax whistleblower.

Civil, criminal and administrative liability protection

You are protected from civil, criminal and administrative liability in relation to your disclosure. For example, your employer can't sue you or terminate your employment for breaches of contract or confidentiality.

Any information incriminating you will not be treated as admissible in evidence against you in criminal or penalty proceedings. If your disclosure reveals a breach in your personal tax affairs, such as undeclared income, you may have immunity against any criminal or penalty proceedings. This immunity does not prevent us from issuing a tax assessment or imposing an administrative penalty in respect of your own tax liability. However, we may treat your disclosure as a voluntary disclosure in determining your liability for penalties in respect to any unpaid tax.

Detrimental conduct protection

If you make a disclosure, you are protected from detrimental conduct. It is illegal for anyone to cause detriment to you in relation to a disclosure, or a suspected disclosure. For example, you can't:

- be dismissed, harassed or intimidated, harmed or injured (including psychologically) by your employer
- have your property, business or your financial position damaged.

Compensation and other remedies

You can receive compensation if a court finds you suffered detriment in relation to your disclosure. If you were victimised and suffered loss, damage or injury as a result of it, a court may order the person causing you detriment to compensate you if it thinks appropriate. Examples of the remedies available include:

- paying damages
- reinstating employment
- an injunction to prevent or stop detrimental conduct
- apologising.

How to make a disclosure to us

Use the [tip-off form](#) to make a disclosure to us. It only takes a few minutes and your information is treated confidentially. You don't have to give us your personal details if you don't want to.

Remember to make note of the reference number when you submit your form to us – you will need to quote the number if you want to add any further information later.

You can also:

- complete our tip-off form in the contact section of the [ATO app](#)
- phone 1800 060 062
- [Report unpaid super contributions](#) from your employer (but not about another business)
- write to us – mark all letters 'in confidence' and mail to:

Australian Taxation Office
Tax Integrity Centre
Locked Bag 6050
DANDENONG VIC 3175

- if you prefer to speak to us in a language other than English, phone the Translating and Interpreting Service (TIS) on 13 14 50 for help with your call
- tax practitioners – phone us on 13 72 86 (Fast Key Code 3 4).

Company whistleblower policies

As part of the corporate sector whistleblower reforms (separate to the tax whistleblower reforms), public companies, large proprietary companies, and proprietary companies that are trustees of registrable superannuation entities must have a corporate sector whistleblower policy in place by 1 January 2020.

The Australian Securities & Investments Commission (ASIC) has provided [guidance on those policies](#)^{E2}, which includes recommendations for incorporating tax whistleblower policies as part of a company's wider whistleblower policy.

See also:

- [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Act 2019](#)^{E2}
- [Making a tip-off](#)
- [Tax Integrity Centre](#)
- [Your privacy if you make a tip-off](#)
- 'Tax whistleblowers' in [other languages](#)

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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