

Whistleblower policies required for large proprietary and public companies

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From 1 January 2020, public companies and large proprietary companies are required to have a whistleblower policy and make it readily available to their officers and employees. While other pre-existing whistleblower laws cover some public sector entities and their employees, the new requirements are designed to strengthen whistleblower protections for the corporate sector.

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* amended the *Corporations Act 2001 (Corporations Act)* so that a single, strengthened whistleblower regime covers the corporate, financial and credit sectors.

All companies are bound by the whistleblower protections in the *Corporations Act*. However, only public companies, large proprietary companies, and corporate trustees of superannuation entities regulated by APRA are required to have a whistleblower policy. Although caught by the legislation, ASIC has provided relief for not-for-profit public companies limited by guarantee with annual (consolidated) revenue of less than \$1 million from the requirement to have a whistleblower policy.

The whistleblower policies must set out:

- Who is covered by the policy;
- What are reportable whistleblower matters;
- how the company will protect whistleblowers;
- how it will investigate their concerns and communicate with the whistleblower.

An eligible whistleblower includes an individual who is, or has been, an officer or employee (including part-time, casual or temporary) of the entity, a supplier of services or goods to the entity, an associate, or relative, dependent or spouse of an officer, employee or supplier of the entity.

Matters that are covered by whistleblower protections include:

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- fraud, money laundering or misappropriation of funds;
- offering or accepting a bribe;
- financial irregularities;
- failure to comply with, or breach of, legal or regulatory requirements; and
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a whistleblower disclosure.

The whistleblower policy must also set out who a whistleblower can report suspected matters to. That person can be an officer or senior member within the company, an internal or external auditor, or an external party engaged by the company to act in that capacity.

In November 2019, ASIC released *Regulatory Guide 270 Whistleblower Policies* to assist companies to meet their obligations under the law to have a whistleblower policy.

The guidance sets out the components that a whistleblower policy must include as required by the law. It also provides good practice guidance and tips to assist companies to implement and maintain policies that are tailored to their operations.

ASIC has announced plans to survey whistleblower policies from a sample of public companies, large proprietary companies, and corporate super trustees during 2020 to review compliance with the legal requirements and the extent to which these companies are implementing good practices.

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