



Australian Government
Sport Integrity Australia



SPORT INTEGRITY
AUSTRALIA

DRAFTING NOTES

Whistleblower Policy

Background

This document contains drafting notes to assist a Sport Organisation finalise its own whistleblower policy, using the template Whistleblower Policy provided by Sport Australia

A Sport Organisation should seek independent legal advice in relation to its whistleblower obligations under the [Corporations Act 2001 \(Cth\)](#), which for most Sport Organisations will extend further than simply adopting a compliant whistleblower policy. Whistleblower obligations may also apply to an organisation that is not required to adopt a whistleblower policy.

In accordance with section 270.14 of ASIC's [Regulatory Guide 270: Whistleblower policies](#), "[a]n entity's board is ultimately responsible for the entity's whistleblower policy, as part of the entity's broader risk management and corporate governance framework."

FURTHER INFORMATION

For any questions in relation to the template Whistleblower Policy or these drafting notes, please contact:

Sport Integrity Australia

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Drafting notes

Drafting Note 1

Section 1317AI of the Corporations Act 2001 (Cth) requires that public companies (which includes companies limited by guarantee) have a whistleblower policy that sets out the matters listed in section 1317AI(5). Under [ASIC Corporations \(Whistleblower Policies\) Instrument 2019/1146](#), not-for-profit companies limited by guarantee with annual consolidated revenue of less than \$1 million are exempt from this requirement, although remain subject to other whistleblower obligations.

The requirement to have a whistleblower policy commenced on 1 January 2020 - failure to do so is a strict liability offence.

The prescribed matters that must be addressed in a whistleblower policy include:

- information about the protections available to whistleblowers
- information about to whom disclosures qualify for protection and how they may be made
- information about how the company will support whistleblowers and protect them from detriment
- information about how the company will investigate disclosures that qualify for protection
- information about how the company will ensure fair treatment of employees of the company who are mentioned in disclosures
- information about how the policy is to be made available to officers and employees of the company; and
- any matters prescribed by the regulations for the purposes of the paragraph.

Drafting Note 2

Section 1317AI of the Corporations Act 2001 requires the policy to outline how the policy is to be made available to officers and employees of the company. RG 270 suggests methods including uploading on the entity's intranet system and inclusion in employee induction information / packs.

Drafting Note 3

The individual within the Sport Organisation given responsibility for whistleblower protection should be sufficiently senior to be able to seek legal advice, as required, to ensure queries from staff and other potential eligible whistleblowers are answered correctly. We expect that for most NSOs, this person will be an executive-level employee, such as the Chief Operating Officer or head of the human resources department. For SSOs or other smaller sport organisations, we expect this will more likely be the CEO or equivalent.

It will be important for sport organisations to have a centralised contact that individuals can contact, before they reach the level of making a protected disclosure, to discuss the whistleblower laws and the sport organisation's policy. We recommend this person is also an eligible recipient - either through being an officer or senior manager, or through authorisation under the policy itself. The benefit of having a single **whistleblower officer** is consistency of message, increasing the likelihood the sport organisation complies with its legal obligations, and also making it easier for eligible whistleblowers to know who to initially contact if they are thinking about making a disclosure.

Drafting Note 4

RG 270 recommends a whistleblower policy provides information about how employees can internally raise personal work-related grievances and other types of issues or concerns that are not covered by the whistleblower policy. Where highlighted, insert the name of the Sport Organisation's applicable policy or policies.

Drafting Note 5

Section 1317A(5)(b) of the Corporations Act 2001 requires the inclusion of information about whom disclosures that qualify for protection may be made to, and how. For this reason, the reference to "officer or senior manager" must be included, as they are eligible recipients irrespective of who the preferred recipient(s) is/are.

As sport organisations do not, generally, have large numbers of staff, we recommend a suggested first point of contact included within the policy for larger NSOs is (at a minimum) an executive level employee, and for smaller NSOs and SSOs, is the organisation's CEO.

It is important to be aware, however, that protected disclosures may be made to any officer or senior manager within the Sport Organisation - these are defined terms within the Corporations Act.

Drafting Note 6

This section of the policy is **optional**, and **should only be included** if the Sport Organisation has approved and established an external reporting service. RG 270 provides that a smaller entity may consider authorising an independent whistleblowing service provider as an eligible recipient for directly receiving disclosures where it is financially viable for them to do so.

It is important to note that the Sport Organisation remains responsible for meeting its legal obligations for outsourced functions, and should undertake appropriate due diligence before engaging an independent whistleblowing service. If an external service is engaged, include any other specific arrangements with that provider that may be relevant to disclosers.

The nomination of an external reporting service/whistleblowing hotline must be specifically approved by a resolution of the board of the Sport Organisation, unless the entirety of the policy is approved by such a board resolution

Drafting Note 7

Section 1317A(5)(a) of the Corporations Act 2001 requires the policy to set out information about the protections available to disclosers under the Act and how disclosers will be protected

Drafting Note 8

Section 1317A(5)(d) of the Corporations Act 2001 requires the policy to outline how the Sport Organisation will investigate disclosures that qualify for protection.

It is important to be aware that, where the initial disclosure is made to ASIC, APRA or a prescribed Commonwealth authority, then, if there is no resolution or clear progress within 90 days of the date of the disclosure, the discloser may be able to make a disclosure to a Member of Parliament or a journalist if the matter is one of public interest.

Drafting Note 9

Due to the small size of most sport organisations relative to other entities caught by the whistleblower laws, we expect the CEO of the Sport Organisation (or President if there is no CEO) will be the most appropriate person to receive the findings of any investigation.

Drafting Note 10

Section 1317A(5)(e) of the Corporations Act requires the policy to set out how the Sport Organisation will ensure fair treatment of employees to which a protected disclosure relates.

Drafting Note 11

If a protected disclosure under the policy results in the need to discipline a third party falling under the jurisdiction of the Sport Organisation, such as another employee, member or volunteer, this disciplinary action will need to be taken under the relevant Sport Organisation policy.

To finalise this policy, we recommend the Sport Organisation inserts the name of its overarching disciplinary policy / procedure, as well as any codes of conduct that would commonly be relied upon in circumstances where misconduct was found to have taken place.

Drafting Note 12

RG 270 recommends an entity required to adopt a whistleblower policy reviews its policy, processes and procedures on a periodic basis, and at least once every two years.