



STEWARDSHIP & RISK

Whistleblower Protections: A Governance Obligation Most Boards Haven't Actioned

The \$1 million exemption covers the policy requirement. The actual law still applies to you

A specific misunderstanding trips up small and mid-sized association boards on this topic more than any other point in the whistleblower regime: many assume that falling under a revenue threshold exempts them from the law entirely. It does not. It exempts them from one specific requirement, having a formal written policy, while leaving the actual legal protections fully in force regardless of size.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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Two Separate Obligations, Often Confused

Part 9.4AAA of the Corporations Act 2001 (Cth) imposes the substantive whistleblower protection regime on every company, including every company limited by guarantee, regardless of size or revenue. This includes strict confidentiality obligations around a whistleblower's identity, and prohibitions on causing or threatening detriment, dismissal, demotion, harassment, or reputational damage, against someone who has made or is believed to have made a protected disclosure. This substantive obligation applies universally to every CLG, with no size exemption at all.

The separate requirement to maintain a formal, documented whistleblower policy is narrower. ASIC Corporations (Whistleblower Policies) Instrument 2019/1146 exempts not-for-profit or charitable public companies limited by guarantee with annual consolidated revenue under \$1 million from the policy requirement, and ASIC Regulatory Guide 270 explains what a good policy contains. This relief applies to the policy document alone. It does not touch the underlying confidentiality and anti-detriment obligations, which continue to bind the organisation and its officers regardless of size.

Falling below the \$1 million threshold means your board does not have to produce a formal written policy. It does not mean the law stops applying to how you actually treat someone who reports wrongdoing.

Who This Actually Protects, And Who Must Handle It Properly

The definition of an eligible whistleblower is deliberately broad: current and former employees, officers, contractors, and suppliers, along with their relatives and dependants, and disclosures can be made anonymously. Protection applies when the disclosure concerns misconduct or an improper state of affairs; a report solely about a personal work-related grievance is generally not protected unless it also involves those matters or victimisation. On the receiving end, an officer of the organisation, which

includes every director, is automatically an eligible recipient under the Act, meaning a director who receives a disclosure is immediately bound by the confidentiality and anti-detriment obligations whether or not they were specifically trained for the role. This is a real exposure point for volunteer boards: a director who mishandles a disclosure, by failing to protect the whistleblower's identity or by allowing retaliation to occur, can trigger serious civil and criminal consequences for themselves personally, entirely separate from whether the organisation was required to have a formal policy at all.

A Note For Incorporated Associations

The regime is not limited to companies limited by guarantee. An incorporated association can also be captured if it meets the constitutional definition of a trading or financial corporation, a fact-specific question turning on the extent of the organisation's trading or financial activities relative to its overall operations. Associations still incorporated under state legislation should not assume the regime is automatically irrelevant to them without actually checking this.

- Confirm whether your organisation is bound by the substantive Part 9.4AAA protections, which applies to essentially every CLG regardless of size, separately from whether the formal policy requirement applies.
- Even where the \$1 million threshold exempts your organisation from the formal policy requirement, treat documenting a clear internal process as good governance, consistent with sector guidance, rather than skipping it entirely because it is not technically mandatory.
- Ensure every director understands they are automatically an eligible recipient under the Act, and brief them specifically on the confidentiality and anti-detriment obligations that attach the moment they receive a disclosure.
- If your organisation is an incorporated association rather than a CLG, confirm whether your trading or financial activities could bring you within the regime, rather than assuming the exemption applies by default.
- Connect whistleblower handling directly to the disciplinary and conduct discipline discussed earlier in this quarter, since a whistleblower disclosure often surfaces exactly the kind of conduct issue that discipline is designed to address.

A whistleblower regime that exists only on paper protects nobody, and a board that assumes size alone exempts it from the law is exposed in exactly the moment it matters most, when someone has trusted the organisation enough to come forward.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

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BOARDROOM ACTION WORKSHEET

Whistleblower Protections: A Governance Obligation Most Boards Haven't Actioned

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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