

INTERNATIONAL NEEDS AUSTRALIA

Board of Directors Policy

Title: 1.8 Whistleblower Policy

Date of Adoption: 27th March 2013

Amended 3rd June 2017

Amended 28th August 2019

Amended 25th August 2021

Date of Adoption of new version: 29th October 2025

This policy is to be reviewed no later than 29th October 2028

Purpose

- (a) This policy sets out our commitments in relation to disclosures of concerns about us such as misconduct, wrongdoing or impropriety, or unsatisfactory circumstances in relation to us and how we will support those who make disclosures of concerns (each a **discloser**) and also those who are the subject of or mentioned in disclosures (each an **affected person**).
- (b) **Attachment A** to this policy are the procedures that we will follow in response to a disclosure, subject to the circumstances and what relevant law may require.
- (c) **Attachment B** to this policy is a guide about whether a disclosure will be protected under:
 - (i) the *Corporations Act 2001* (Cth) (the **Corporations Act**) which is relevant because we are a company under this Act;
 - (ii) the *Tax Administration Act 1953* (Cth) (**Tax Administration Act**) which is relevant because we are a registered charity with charity tax concessions and endorsements under this Act; and
 - (iii) the *Public Interest Disclosure Act 2013* (Cth) (the **Commonwealth Government Act**) which is relevant because we are a contracted service provider under this Act (that is, we are a party to a contract with the Commonwealth or one or more Commonwealth agencies under which we provide goods and services to the Commonwealth).

Scope

- (a) This policy applies to the following persons:
 - (i) all our personnel (being our directors and other officers (such as our company secretary and public officer), employees, and volunteers;
 - (ii) each person who is our contractor;
 - (iii) each person (including our personnel referred to above) who is eligible to make a disclosure under the three Act listed in 1.1(c) above); and
 - (iv) those persons who have specific responsibilities for this policy (as a whole or parts of it) – see 0 below.
- (b) This policy does not apply to a disclosure to the extent the disclosure:

- (i) relates to a personal work-related grievance or personal work related conduct;¹ (disclosure of which should be made under our workplace grievance procedures for such matters); and
- (ii) does not concern a contravention, or an alleged contravention, of the prohibition against victimisation of the discloser under the law² or that involves detriment caused to the discloser or a threat made to the discloser.³

Policy Statement

- (a) We encourage any person have concerns in relation to us on reasonable grounds to make a disclosure in accordance with this policy.
- (b) We are committed to provide transparency about how we receive and handle disclosures subject to requirements under the law.
- (c) We are committed to taking appropriate action to address concerns in relation to us, including:
 - (iv) ensuring that disclosers can make disclosures safely, securely and with confidence, including that they will be protected under the Corporations Act, the Taxation Administration Act or the Commonwealth Government Act as relevant if their disclosures are protected under these laws;
 - (v) ensuring that affected persons can respond safely, securely and with confidence to the disclosures; and
 - (vi) taking reports of investigations into disclosures of concerns seriously and taking appropriate steps to address findings and recommendations (if any) in such reports.

Policy in Practice

Before making a disclosure

- (a) Any person may make a disclosure under this policy but we encourage each prospective discloser to consider before making the disclosure whether the disclosure will be protected under one (or more) of the Corporations Act, the Taxation Administration Act or the Commonwealth Government Act, and therefore under this policy.
Generally, there are three requirements to be met for the disclosure to be protected:
 - (i) The discloser must be eligible under the relevant legislation;
 - (ii) The disclosure must be made to certain recipients only; and
 - (iii) The information disclosed must meet certain criteria.Annexure B set out guidance on these matters. Only disclosures which meet the three requirements are protected under the relevant Act and therefore under this policy too.
- (b) The discloser must have reasonable grounds to suspect that the information disclosed relate to certain circumstances for the disclosure. If the discloser makes a false or vexatious disclosure or does not have reasonable grounds to suspect the information is true, the disclosure could lead to reputational and

¹ See section 1317AADA of the Corporations Act and sections 29(2A) and 29A of the Commonwealth Government Act. Section 1317AADA of the Corporations Act defines constitutes "personal work related grievance" and the note to the provision lists the following as examples of personal work-related grievance: an interpersonal conflict between the discloser and another employee, a relating to the engagement, transfer or promotion of the discloser, a decision relating to the terms and conditions of engagement of the discloser and a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser. Section 29A of the Commonwealth Government Act defines "personal work related conduct".

² Section 1317AC of the Corporations Act for example.

³ Section 1317AADA of the Corporations Act for example.

other negative consequences for us and also affected persons and other persons. We will treat any false or vexatious reports seriously and may take disciplinary action against any discloser making such disclosures (including dismissal if the discloser is an employee).

- (c) Nothing in this policy shall be read to absolve a discloser from the consequences of any involvement they may have on their own part in any misconduct, wrongdoing or impropriety, or unsatisfactory circumstance in relation to us. If this is the case, disciplinary steps against the discloser may be taken (including dismissal from employment or termination of an agreement) and the discloser may not be provided with any protection from any criminal prosecution or investigation by a regulator (where relevant).
- (d) There is no requirement for a discloser to identify themselves for their disclosure under this policy or to qualify for protection under the Corporations Act, the Tax Administration Act or the Commonwealth Government Act,⁴ but if the discloser chooses to remain anonymous, it may not be possible for some of the steps set out in Annexure A to be taken. For example, it would not be possible for the investigator to seek further details from the discloser.

Recipients of disclosures

- (e) For any disclosure under this policy, we encourage that they be made to the persons listed in the table below. These persons are also those authorised by us, or are able under the Corporations Act, the Tax Administration Act or the Commonwealth Government Act, to receive disclosures. Under these Acts, disclosures may also be made to others – see Annexure B.

1.	If the disclosure relates to a matter or circumstances involving:	The disclosure should be made to the following recipient:
2.	The Board or any director	Chief Executive Officer
3.	Chief Executive Officer	Chair of the Finance, Risk and Audit Committee <u>or</u> if the Chair of the Finance, Risk and Audit Committee is an affected person, the Board Chair.
4.	Any other personnel other than the above:	Chief Executive Officer

The contact details of the persons listed above are as follows:

Chief Executive Officer	Dr. Andrew Catford AndrewC@ina.org.au 16 Corporate Boulevard, Bayswater VIC 3153 PO Box 484, Bayswater VIC 3153 Mobile: +61 421758574 Fax: +61 3 9877 7377
Chair of the Finance, Risk and Audit Committee	Tristan Heron tristanh@ina.org.au 5. PO Box 484, Bayswater VIC 3153 Mobile: +61 439 563 862
Board Chair	Alex Milner alexm@ina.org.au

⁴ Note to section 1317AA of the Corporations Act, note to section 14ZZT of the Tax Administration Act and note to section 28(2) of the Commonwealth Government Act respectively.

	PO Box 484, Bayswater VIC 3153 Mobile: +61 432 320 709
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- (f) A prospective discloser should contact the Chief Executive Officer if:
- (i) they are not comfortable making a disclosure to any of the persons in the list in 1.1(e) above; or
 - (ii) if they are uncertain about whether their disclosure would be a protected disclosure under the Corporations Act, the Tax Administration Act or the Commonwealth Government Act.
- A prospective discloser may also take their own legal advice.

Procedures after disclosure is received

- (g) Where a disclosure is received by any of the recipients listed in 1.1(d) above, the steps set out in Annexure A will be taken. But alternative steps may be taken as appropriate taking into account the discloser, the matters disclosed, each affected person and the circumstances.
- (h) If the recipient of a disclosure is a person other than a recipient listed in 1.1(e) above, that recipient may follow their own steps. For example, if the discloser makes the disclosure to the Commissioner of Taxation, the Commissioner may follow the procedures of the Australian Taxation Office in relation to the disclosure.

Support and protections

- (i) The identity of a discloser (and any information that is likely to lead to identification of the discloser), the fact of disclosure, and the matters disclosed are to be treated by all our personnel as confidential. They are to refrain from any discussions with any person other than on a strict need to know basis (for example, the investigator or a legal advisor for the purpose of legal advice). Any breach of this requirement may result in disciplinary action (including dismissal from employment or termination of an agreement).
- (j) Where the disclosure is a protected disclosure under the Corporations Act, the Tax Administration Act or the Commonwealth Government Act, the requirements under these Acts relating to protection of the discloser and the disclosure as applicable must be complied with. These includes keeping confidential the identity of a discloser (and any information that is likely to lead to identification of the discloser)⁵ and not engaging in victimisation of the discloser.⁶
Any breach of this requirement may result in disciplinary action (including dismissal from employment) and may also be an offence under the legislation for which the penalty may be a fine or imprisonment.

Responsibilities

- (k) **Board:** The Board is responsible for this policy overall and ensuring that all personnel discharge their responsibilities under this policy.
- (l) **Chair of the Finance, Risk and Audit Committee and the Board Chair:**
 - (i) The Chair of the Finance, Risk and Audit Committee and the Board Chair has specific functions set out in Annexure A but may delegate such functions to another director or a board committee.

⁵ Section 1317AAE of the Corporations Act, section 14ZZW of the Tax Administration Act and section 20 of the Commonwealth Government Act respectively.

⁶ Section 1317AC of the Corporations Act, section 14ZZY of the Tax Administration Act and section 19 of the Commonwealth Government Act respectively.

- (ii) Where the Chair of the Governance Policy or the Board Chair is an affected person, their functions in Annexure A shall be assumed by another director appointed by the directors.
- (m) **All other personnel:** All other personnel to whom this policy applies must:
 - (i) familiarise themselves with, and comply with the requirements under this policy;
 - (ii) contribute to a work environment that is supportive of disclosures of concerns in relation to us; and
 - (iii) where there are specific responsibilities or functions for them set out in this policy, fulfil them in accordance with this policy.

Access to this policy

This Policy will be published or referred to on our website and a copy will be provided to any prospective discloser on request to the Chief Executive Officer.

Relevant laws:

- *Australian Charities and Not-for-profits Commission Act 2012 (Cth) and Australian Charities and Not-for-profits Commission Regulations 2013 (Cth)*, in particular:
 - ACNC Governance Standards 1 and 3 (s 45.5 and 45.15 of the above Regulations)
 - ACNC External Conduct Standards 1 and 3 (s 50.20 and 50.30 of the above Regulations).
- *Corporations Act 2001 (Cth)*, Part 9.4AAA
- *Taxation Administration Act 1953 (Cth)*, Part IVD
- *Public Interest Disclosure Act 2013 (Cth)*, Part 2

Related policies:

- Fraud Prevention and Awareness Policy
- 1.8 Policy on Complaints
- Policy on Counter Terrorism
- Policy on Child Protection
- Policy on Prevention of Sexual Exploitation & Abuse
- INA Procedure Manual Volume 4: Human Resources

Annexure A – Procedures where disclosure is made under 4.3(a) of the policy

Step 1 – Preliminary assessment

The recipient of a disclosure will make a preliminary assessment (with legal advice as may be necessary) and decide if the disclosure is made under:

- (a) the disclosure regime of the Commonwealth Government Act and if so, legal advice will be sought as to the appropriate procedures to be followed and the procedures as advised should be followed.
- (b) the disclosure is made under the whistleblowing regime of the Corporations Act or the Tax Administration Act or on another basis, and if so, proceed with the steps set out below. Note that alternative steps may be taken as appropriate taking into account the discloser, the matters disclosed, each affected person and the circumstances (see 0 of the policy).

Step 2 – Investigation

- (a) Where the disclosure relates to a matter or circumstances involving the Board (item 1 of the table in 1.1(e) of the Policy), the Chief Executive Officer as the recipient of the disclosure will seek legal advice as to the appropriate procedures to be followed and take steps as advised.
- (b) Where the disclosure relates to any other personnel (items 2-5 of the table in 1.1(e) of the Policy), the recipient will:
 - (i) set the terms of reference for the investigation into the matters disclosed; and
 - (ii) appoint an investigator (**Investigator**) to investigate the matters disclosed in accordance with the terms of reference.

In relation to the above:

- (i) The recipient may, but need not, consult with other persons named as recipients in the table in 1.1(e) of the Policy (as appropriate) or engage external experts for advice about a prospective Investigator and the terms of reference to be set.
- (ii) The Investigator may be the recipient to whom the disclosure was made or some other personnel of ours or a third party.

Step 3 – Notification of investigation

The recipient of the disclosure will notify the discloser (unless the discloser has made the disclosure anonymously) and any affected person and other relevant personnel of ours, as appropriate:

- (a) when the Investigator has been appointed;
- (b) the identity of the Investigator; and
- (c) when the Investigator's report is due.

Step 4 – Investigation

The Investigator is to conduct an investigation into the matters disclosed. In particular, the Investigator will:

- (a) ensure that the investigation proceeds promptly in accordance with the terms of reference and this policy;
- (b) seek further details (in writing or verbally) from the discloser (unless the discloser has made the disclosure anonymously) and any affected person and other relevant personnel of us as appropriate about:
 - (i) the matters disclosed;
 - (ii) the grounds on which the discloser reasonably believes that the disclosure meet the requirements for protected disclosures – see Annexure B; and

- (iii) the nature or location of any further information or evidence that may be relevant to the matters disclosed.
- (c) unless the discloser has made the disclosure anonymously, seek confirmation from the discloser in writing as to whether the discloser consents to their identity (or information which may reveal their identity) being disclosed to other persons from whom the investigator may seek further details.
- (d) take reasonable precautions to store any information relating to the investigation securely and restrict access to authorised persons only to maintain confidentiality;
- (e) observe principles of impartiality and fairness during the investigation (including, giving any affected person the opportunity to respond and considering any such responses carefully); and
- (f) provide a report in writing to the recipient of the disclosure setting out the following by the due date:
 - (i) details of the disclosure;
 - (ii) conclusions reached with explanation of relevant findings of fact and the evidence relied upon in reaching conclusions;
 - (iii) recommendations based on the conclusions including to address the matters disclosed and/or to report relevant matters to regulators (with reference to any self-reporting or mandatory reporting obligations);
 - (A) confirmation whether the disclosure is protected disclosure under the Corporations Act or the Tax Administration Act and if so, the steps taken and to be taken protect the rights the discloser; and
 - (B) any other matters the Investigator may consider appropriate or specifically sought by the Chair of the Finance, Risk and Audit Committee.

Step 5 – Decision after Investigator’s report

- (a) Promptly after the report is received from the Investigator, the recipient of the disclosure will:
 - (i) If the matters and circumstances investigated involves a director or the Chief Executive Officer provide a copy of the Investigator’s report to the Board Chair who will be the decision maker and decide on the actions to be taken.
But if the Board Chair is the director involved in the matters and circumstances investigated, the Chair of the Finance, Risk and Audit Committee will be the decision maker and decide on the actions to be taken.
 - (ii) If the matters and circumstances investigated any of our personnel (other than directors or the Chief Executive Officer), provide a copy of the Investigator’s report to the Chief Executive Officer who will be the decision maker and decide on the actions to be taken.
- (b) In relation to the above, the decision maker may seek the involvement of others as appropriate in their decision making.
For example, the Board Chair in making a decision in respect of item 1 in the table above seek the views of relevant directors about the Investigator’s report and the actions to be taken.

Step 6 – Notification of decision

After a decision has made under Step 6 above, the decision maker will promptly provide the discloser (unless the discloser has made the disclosure anonymously) and any affected person a summary of the decision, subject to considerations of the privacy of those involved in the matters disclosed and any other matters of commercial or regulatory sensitivity.

Step 7 – Appeal from a decision

- (a) If the decision maker is the Chair of the Finance, Risk and Audit Committee or the Chief Executive Officer and after receiving the summary of the decision, the discloser or any affected person is not satisfied with the decision, they make a request for a review of the decision to Board Chair who will review the request or appoint a third party to do so.
- (b) If the decision maker is the Board Chair, their decision is final unless they determine that a third party may be appointed to review a request for review of the decision.
- (c) In reviewing the request, the Board Chair or the third party appointed to do so may but need not reopen the investigation and if they conclude that the investigation was conducted properly and no new information reasonably exists that would change the results of the investigation, the investigation will be considered concluded and the decision will stand.

Annexure B – Guide to determining if a disclosure will be protected under the Corporations Act, the Tax Administration Act or the Commonwealth Government Act

Our policy encourages any person wishing to make a disclosure (the **discloser**) to consider if the disclosure will be protected under the following legislation before making the disclosure:

- the *Corporations Act 2001* (Cth) (**Corporations Act**) or
- the *Tax Administration Act 1953* (Cth) (**Tax Administration Act**) or
- the *Public Interest Disclosure Act 2013* (Cth) (**Commonwealth Government Act**)?

We provide guidance on these requirements to be met for the disclosure to be protected under the above laws in this Annexure B to our Whistleblowing Policy. This guidance is not legal advice.

The guidance about:

- the Corporations Act and the Tax Administration Act together is set out in 1 below because the regimes under the two Acts are largely similar; and
- the Commonwealth Government Act is set out in 22 below.

1 Requirements under the Corporations Act and the Tax Administration Act

1.1 General:

- (a) For a disclosure to be protected under the regimes under these two Acts, the three requirements set out 1.2 below must be met. Words which are in italics in this part have the meanings given to them in 1.3 below.
- (b) While there is a great deal of similarity between the regimes under the two Acts, there are some key differences as between the regimes as can be seen from the details about set out in 1.2 below. In summary:
 - (i) An *associate* of ours is eligible to make a disclosure under both the Corporations Act and the Tax Administration Act but the definition of *associate* for the purposes of the Tax Administration Act is broader than the definition of the same term for the purposes of the Corporations Act.
 - (ii) While a person who has previously been in a role set out in the table in relation to Requirement 1 in 1.2(a)1.2(a) below is an eligible discloser under the Corporations Act, such a person is not an eligible discloser under Tax Administration Act.
 - (iii) In relation to the recipient of a disclosure, there are differences as to some of the persons/bodies to whom disclosure must be made for the disclosure to be protected under the regimes under the three laws – see the list in the table in relation to Requirement 2 in 1.2(b) below.
 - (iv) The type of information disclosed that will attract protection is different under the two regimes – see the explanation in relation to Requirement 3 in 1.2(c) below.
 - (v) Further, there is protection for *public interest disclosure*⁷ and *emergency disclosure*⁸ under the Corporations Act but not under the Tax Administration Act.

⁷ Section 1317AAD(1) of the Corporations Act.

⁸ Section 1317AAD(2) of the Corporations Act.

1.2 The three requirements:

(a) **Requirement 1: The discloser must be an eligible person in relation to us**

- (i) The table below summarises who is an eligible discloser in relation to us under the Corporations Act and the Tax Administration Act. In short, unless a discloser is a person in the list below under the relevant legislation, their disclosure will not be protected under that legislation (even if Requirements 2 and 3 are met).

	Corporations Act ⁹	Tax Administration Act ¹⁰
i. an <i>officer</i> of ours	Yes	Yes
ii. an <i>employee</i> of ours	Yes	Yes
iii. an individual who supplies good or services to us (whether paid or unpaid) and any of employee of such an individual	Yes	Yes but note that <i>associate</i> is broader than under the Corporations Act – see definition in 1.3 below
iv. an individual who is an <i>associate</i> of ours	Yes	Yes
v. a <i>relative</i> of any person referred to in i-iv above	Yes	Yes
vi. a dependant of any person referred to in i-iv above or their spouse	Yes	Yes
vii. person who has previously held any of the above positions or functions	Yes	No

- (ii) In the case of a *public interest disclosure* or an *emergency disclosure* under the Corporations Act, the disclosure must be made by the same person who has made an earlier disclosure.¹¹

(b) **Requirement 2: The disclosure must be made to certain recipients**

- (i) The table below lists those persons to whom the disclosure must be made under the Corporations Act and the Tax Administration Act. In short, unless a discloser makes their disclosure to one of these persons, their disclosure will not be protected under the relevant legislation (even if Requirements 1 and 3 are met).

	Corporations Act ¹²	Tax Administration Act ¹³
i. a person authorised by us to receive disclosures – see 1.1(d) of our policy	Yes	Yes
ii. The Australian Securities and Investments Commission (ASIC)	Yes	No

⁹ Section 1317AAA of the Corporations Act.

¹⁰ Section 14ZZU of the Tax Administration Act.

¹¹ Section 1317AAD(1)(a) and section 1317AAD(2) of the Corporations Act.

¹² Sections 1317AA of the Corporations Act and section 1317AAC of the Corporations Act (“eligible recipient”).

¹³ Sections 14ZZT and 14ZZV of the Tax Administration Act.

iii.	Commissioner of Taxation	No	Yes
iv.	An <i>officer</i> of ours	Yes	Yes
v.	A <i>senior manager</i> of ours	Yes	Yes
vi.	Any employee or <i>officer</i> of ours who has functions or duties that relate to the tax affairs (meaning the affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner of Taxation)	No	Yes
vii.	an auditor or member of the audit team conducting an audit: <ul style="list-style-type: none"> • of us • a <i>related body corporate</i> of ours 	Yes Yes	Yes No
viii.	an actuary of us or a <i>related body corporate</i> of ours	Yes	
ix.	a registered tax agent or BAS agent of ours	No	Yes
x.	a person prescribed under the relevant law	Yes (Commonwealth authority prescribed for section 1317AA(1)(b)(iii) or person prescribed for section 1317AAC(3) of the Corporations Act)	Yes (prescribed for section 14ZZV(1)(d) of the Tax Administration Act)
xi.	a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of whistleblower protection parts of the legislation.	Yes	Yes

- (ii) Additionally:
- (A) In the case of a *public interest disclosure* or an *emergency disclosure* under the Corporations Act, the disclosure must be made to:
- (1) a member of the Parliament of the Commonwealth or a State or the legislature of a Territory; or
 - (2) a journalist.¹⁴

¹⁴ Section 1317AAD(1)(f) and section 1317AAD(2)(d) of the Corporations Act.

Note that "journalist" is defined in section 1317AAD(3) of the Corporations Act as a person working in a professional capacity as a journalist for: (a) a newspaper or magazine, radio or television broadcasting service or (b) an electronic service operated on a commercial basis or by a body that provides national broadcasting service (as defined in the *Broadcasting Services Act 1992* (Cth)) and is similar to newspaper, magazine or radio or television broadcast. "Journalist" therefore does not include what are currently popularly referred to as citizen journalists.

- (B) While we are a registered charity and regulated by the Australian Charities and Not-for-profits Commission (**ACNC**), the ACNC is not a prescribed recipient under the Corporations Act or the Tax Administration Act.

But information about a breach of the ACNC Act by us could be information disclosure of which would be protected under the Corporations Act or the Tax Administration Act – see the information relating to Requirement 3 (see 1.2(c) below). A prospective discloser should seek advice if they are uncertain about this.

The ACNC has provided guidance on its website about whistleblower protections.¹⁵

(c) **Requirement 3: The disclosed information must meet certain criteria**

In short, unless disclosure is of information of the type prescribed under the relevant legislation, the disclosure will not be protected under the relevant legislation (even if Requirements 1 and 2 are met).

(i) **Corporations Act:**

For the disclosure to be protected under this Act the discloser must have reasonable grounds to suspect that the information:

- (A) concerns misconduct, or an improper state of affairs or circumstances in relation to us or a *related body corporate* of us¹⁶; or

- (B) indicates that we or a *related body corporate* of ours or an *officer* or employee of ours or a *related body corporate* of ours has engaged in conduct that:

- constitutes a contravention of the following legislation¹⁷:
 - the Corporation Act;
 - the *Australian Securities and Investments Act 2001* (Cth); and
 - any instrument made under the above legislation.
- constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
- represents a danger to the public or the financial system;
- is prescribed by regulations for section 1317AA(5)(f) of the Corporations Act.¹⁸

Further in the case of the following under the Corporations Act:

- (A) a *public interest disclosure*, the extent of the information disclosed is to be no greater than is necessary to inform the recipient of the misconduct or the improper state of affairs or circumstances or conduct, as the case may be;¹⁹ and
- (B) an *emergency disclosure*, the extent of the information disclosed in the emergency disclosure is to be no greater than is necessary to inform the recipient of the substantial and imminent danger.²⁰

(ii) **Tax Administration Act:**

¹⁵ <https://www.acnc.gov.au/tools/factsheets/whistleblower-protections>

¹⁶ Section 1317AA(4) of the Corporations Act.

¹⁷ There is other legislation are also listed in section 1317AA(5)(c) of the Corporations Act but are unlikely to be relevant for a registered charity.

¹⁸ Section 1317AA(5) of the Corporations Act.

¹⁹ Section 1317AAD(1)(g) of the Corporations Act.

²⁰ Section 1317AAD(2)(e) of the Corporations Act.

For the disclosure to be protected under this Act:

- (A) where the disclosure is made to the Commissioner of Taxation, the discloser must consider that the information may assist the Commissioner to perform his or her functions or duties under a taxation law in relation to us or an *associate* of ours.²¹
- (B) where the disclosure is made to another recipient (see the table relating to Requirement 2 above), the discloser must:
 - have reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to our tax affairs or of an *associate* of ours; and
 - considers that the information may assist the recipient to perform functions or duties in relation to our tax affairs or of an *associate* of ours.²²

1.3 Definitions for above

Word/term:	Meaning:
associate	<ul style="list-style-type: none"> • Under the Corporations Act, “associate” includes the director and company secretary and a director and secretary of a <i>related body corporate</i> of ours.²³ • Under the Tax Administration Act, “associate” in relation to a company is not limited to individuals and includes²⁴: <ul style="list-style-type: none"> ○ a partner of ours or a partnership in which we are a partner and if the partner is an individual other than a trustee, the spouse or partner of this individual. ○ controlling entity of ours meaning an entity which itself or with another entity <i>sufficiently influences*</i> us or which holds a majority voting interest (more than 50% of votes that may be cast) in us. ○ a controlled company of ours meaning one which we or one of our <i>associates sufficiently influences*</i> or in which we or our associates hold majority voting interest (more than 50% of votes that may be cast) in us. • <i>*“sufficiently influences”</i> here means that we, or our directors, are accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships and trusts).²⁵
emergency disclosure	<ul style="list-style-type: none"> • means a disclosure of information by a discloser where: <ul style="list-style-type: none"> ○ the discloser has made a previous disclosure that qualifies for protection under the Corporations Act; ○ the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and ○ the discloser has provided written notification to us that includes sufficient information to identify their previous disclosure and states that they intend to make an emergency disclosure.²⁶

²¹ Section 14ZZT(1)(c) of the Tax Administration Act.

²² Section 14AAT(2)(c) and (d) of the Tax Administration Act.

²³ Sections 10-17 of the Corporations Act.

²⁴ Section 318(2) of the *Income Tax Assessment Act 1997* (Cth).

²⁵ Section 318(6)(b) of the Tax Assessment Act.

²⁶ Section 1317AAD(2) of the Corporations Act.

officer	<ul style="list-style-type: none"> includes a director and company secretary as well as any person who makes, or participates in making, decisions that affect the whole, or a substantial part, of our business or, who has the capacity to affect significantly our financial standing or in accordance with whose instructions or wishes our directors are accustomed to act (excluding a professional adviser)²⁷
public interest disclosure	<ul style="list-style-type: none"> means a disclosure of information by a discloser where: <ul style="list-style-type: none"> the discloser has made a previous disclosure that qualifies for protection under the Corporations Act more than 90 days ago; the discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related; the discloser has reasonable grounds to believe that making a further disclosure would be in the public interest; and the discloser has (after the 90 days) provided written notification to us that includes sufficient information to identify their previous disclosure and states that they intend to make a public interest disclosure.²⁸
related body corporate	<ul style="list-style-type: none"> includes a body corporate that is a member of ours, any body corporate that is a subsidiary of ours and that is a subsidiary of a member of ours²⁹
relative	<ul style="list-style-type: none"> the spouse, parent or remoter lineal ancestor, child or remoter issue, or brother or sister of the person³⁰
senior manager	<ul style="list-style-type: none"> a person other than one of our directors or secretary who makes, or participates in making, decisions about the whole or a substantial part of our business or has the capacity to affect significantly our financial standing³¹

2 Requirements under the Commonwealth Government Act

2.1 General

For a disclosure to be protected under this Act, it must be a “public interest disclosure” under the Act, meaning that it must meet three requirements as set out below.³² In short if any one of these requirements is not met, the disclosure will not be protected under this Act.

2.2 The three requirements

- (a) **Requirement 1 The discloser must be a public official³³**
- (i) Unless the discloser is a public official, the disclosure will not be protected under the Commonwealth Government Act (even if Requirements 2 and 3 are met).
 - (ii) Under the Act, a public official includes:

²⁷ These are captured in the definition of “officer” in section 9 of the Corporations Act.

²⁸ Section 1317AAD(1) of the Corporations Act.

²⁹ Section 50 of the Corporations Act.

³⁰ Section 9 of the Corporations Act.

³¹ Section 9 of the Corporations Act.

³² Section 26(1) of the Commonwealth Government Act

³³ Section 26(1)(a) of the Commonwealth Government Act.

- (A) an officer³⁴ of ours because we are a contracted service provider or an officer of a sub-contractor of ours under our contract with the Commonwealth government;³⁵
 - (B) an employee of ours because we are a contracted service provider or an employee of a sub-contractor of ours under our contract with the Commonwealth government;³⁶ and
 - (C) others listed in column 1 of the table to section 69 of the Commonwealth Government Act who belongs to an agency mentioned in column 2 of the item. This includes an Australian public service employee in a relevant Commonwealth department, the Secretary of a Commonwealth department or agency, etc.
- (iii) On the basis of (i) and (ii) above, the following personnel would meet Requirement 1:
- (A) any of our officers and employees;
 - (B) an employee of a sub-contractor of ours; and
 - (C) others listed in column 1 of the table to section 69 of the Commonwealth Government Act who belongs to an agency mentioned in column 2 of the item.
- (b) **Requirement 2: The disclosure must be made to certain recipients**
- (i) Unless a discloser makes their disclosure to one of the persons listed in column 2 of the table from the Commonwealth Government Act, set out as Table 1 below, their disclosure will not be protected under the Act (even if Requirements 1 and 3 are met).
 - (ii) Those personnel of ours who are public officials (see 2.2(a) above) may make disclosures to any person listed in column 2 of Table 1.
 - (iii) The persons listed in 1.1(d) of our policy can be recipients of an external disclosure (item 2 of the table) or an emergency disclosure (item 3 of the table) under the Act because they are “other persons”. However, the procedures for dealing with such disclosures would most likely have to be those of the Commonwealth agency to which the concerns relate and it may not therefore be a good choice to make a disclosure to them. Our procedures (see Annexure A) is therefore that if a disclosure is made to one of our personnel listed in 1.1(d) of our policy, legal advice should be sought as to the procedures to be followed (see (b) of Annexure A).
- (c) **Requirement 3: The disclosed information must meet certain criteria**
- (i) Unless disclosure is of information of the type which meets the requirements set out in column 3 of the table from the Commonwealth Government Act, set out as Table 1 below, the disclosure will not be protected under the relevant legislation (even if Requirements 1 and 2 are met).
 - (ii) Disclosure by personnel of ours who are public officials (see 2.2(a) above) must meet the requirements in column 3 of Table 1 for the disclosure to be protected (even if Requirements 1 and 2 are met).
 - (iii) Disclosure to any of the persons listed in 1.1(d) of our policy must meet the requirements in column 3 of Table 1 pertaining to external

³⁴ Unlike the Corporations Act and the Tax Administration Act, there is no definition of “officer” under the Commonwealth Government Act. The definition in the Corporations Act (see 1.3 above) can be assumed to apply.

³⁵ Item 16 of the table to section 69(1) of the Commonwealth Government Act. A sub-contractor of the company is deemed to be a “contracted service provider” under the definition of this term in section 30(2) of the Commonwealth Government Act.

³⁶ Item 16 of the table to section 69(1) of the Commonwealth Government Act

disclosure (item 2 of the table) or an emergency disclosure (item 3 of the table) under the Act for the disclosure to be protected (even if Requirements 1 and 2 are met).

Table 1 – Table from section 26(1) of the Commonwealth Government Act. Words which are in italics in this table have the meanings given to them in 2.3 below.

Item	Column 1 Type of disclosure	Column 2 Recipient	Column 3 Further requirements
1	<i>Internal disclosure</i>	An <i>authorised internal recipient</i> , or a supervisor of the discloser	(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of <i>disclosable conduct</i> . (b) The disclosure is not made in the course of performing the discloser's ordinary functions as a <i>public official</i> .
2	<i>External disclosure</i>	Any person other than a <i>foreign public official</i>	(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of <i>disclosable conduct</i> . (b) On a previous occasion, the discloser made an <i>internal disclosure</i> of information that consisted of, or included, the information now disclosed. (c) Any of the following apply: (i) a disclosure investigation relating to the <i>internal disclosure</i> was conducted under Division 2 of Part 3, and the discloser believes on reasonable grounds that the investigation was inadequate; (ii) a disclosure investigation relating to the <i>internal disclosure</i> was conducted (whether or not under Division 2 of Part 3), and the discloser believes on reasonable grounds that the response to the investigation was inadequate; (iii) this Act requires an investigation relating to the <i>internal disclosure</i> to be conducted under Division 2 of Part 3, and that investigation has not been completed within the time limit under section 52.

Item	Column 1 Type of disclosure	Column 2 Recipient	Column 3 Further requirements
			<p>(e) The disclosure is not, on balance, contrary to the public interest.</p> <p>(f) No more information is publicly disclosed than is reasonably necessary to identify one or more instances of <i>disclosable conduct</i>.</p> <p>(h) The information does not consist of, or include, <i>intelligence information</i>.</p> <p>(i) None of the conduct with which the disclosure is concerned relates to an <i>intelligence agency</i>.</p>
3	<i>Emergency disclosure</i>	Any person other than a <i>foreign public official</i>	<p>(a) The discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment.</p> <p>(b) The extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger.</p> <p>(c) If the discloser has not previously made an <i>internal disclosure</i> of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure.</p> <p>(d) If the discloser has previously made an <i>internal disclosure</i> of the same information, there are exceptional circumstances justifying this disclosure being made before a disclosure investigation of the internal disclosure is completed.</p> <p>(f) The information does not consist of, or include, <i>intelligence information</i>.</p>
4	<i>Legal practitioner disclosure</i>	<i>An Australian legal practitioner</i>	<p>(a) The disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a public interest disclosure.</p> <p>(b) If the discloser knew, or ought reasonably to have known, that any of the information has a national security or other protective security classification, the recipient holds the appropriate level of security clearance.</p> <p>(c) The information does not consist of, or include, <i>intelligence information</i>.</p>

2.3 Definitions for above

Word:	Definition:
Australian legal practitioner	An Australian lawyer who holds a practising certificate under the laws of a State or Territory.
authorised internal recipient	Section 34 of the Commonwealth Government Act lists authorised internal recipients.
disclosable conduct	Section 29 of the Commonwealth Government Act defines this terms and the definition includes conduct that contravenes an Australian law ³⁷ which is engaged in by us as a contracted service provider under a contract with a Commonwealth entity (or a sub-contractor of ours under such a contract) in connection with entering into, or giving effect to, that contract.
emergency disclosure	Under the Commonwealth Government Act is simply a disclosure that is covered by item 3 in Table 1 above. ³⁸ By definition, it cannot be an internal disclosure or an external disclosure or a disclosure made to an Australian legal practitioner.
external disclosure	Under the Commonwealth Government Act is simply a disclosure that is covered by item 2 of Table 1 above. ³⁹ By definition, it cannot be an internal disclosure or an emergency disclosure or a disclosure made to an Australian legal practitioner.
foreign public official	Section 8 of the Commonwealth Government Act adopts the definition of “foreign public official” under the <i>Criminal Code Act 1995</i> (Cth). The definition there (section 70.1) includes an employee or official of a foreign government and an individual who holds or performs the duties of an appointment, office or position under the law of a foreign country, a member of the judiciary of a foreign country, etc
intelligence agency	the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Australian Geospatial-Intelligence Organisation, the Defence Intelligence Organisation, the Australian Signals Directorate or the Office of National Intelligence. ⁴⁰
intelligence information	Includes information that has originated with, or has been received from, an intelligence agency. ⁴¹
internal disclosure	Under the Commonwealth Government Act is simply a disclosure that is covered by item 1 of Table 1 above or is an allegation made in conjunction with such a disclosure. ⁴² By definition, it cannot be an external disclosure or an emergency disclosure or a disclosure made to an Australian legal practitioner.
Legal practitioner disclosure	Under the Commonwealth Government Act this is simply a disclosure that is covered by item 4 of Table 1 above. ⁴³ By definition, it cannot be an internal disclosure, an external disclosure or an emergency disclosure.

³⁷ there are 9 other conduct listed in the table to section 29 of the Commonwealth Government Act.

³⁸ section 8 of the Commonwealth Government Act.

³⁹ section 8 of the Commonwealth Government Act.

⁴⁰ Section 8 of the Commonwealth Government Act.

⁴¹ Full list is in section 41 of the Commonwealth Government Act.

⁴² Section 8 of the Commonwealth Government Act.

⁴³ Section 8 of the Commonwealth Government Act.