

Whistleblowers Policy

July 2023

Table of Contents

1. INTRODUCTION	1
1.1 PURPOSE	1
2. RESPONSIBILITIES	2
2.1 BOARD	2
2.2 AUDIT AND RISK COMMITTEE	2
2.3 CHIEF EXECUTIVE OFFICER (CEO) OR CHAIR OF THE BOARD	2
2.4 EMPLOYEES	2
2.5 WHISTLEBLOWER PROTECTION OFFICER (WPO).....	2
2.6 WHISTLEBLOWER INVESTIGATIONS OFFICER (WIO)	2
3. PRINCIPLES	3
4. GENERAL REQUIREMENTS.....	3
5. REPORTING AND MONITORING.....	3
6. DOCUMENT REVIEW.....	3
7. RULES AND PROCEDURES.....	3

1. Introduction

1.1 Purpose

The purpose of this Policy is to:¹

- Encourage whistleblowers to disclose information to an eligible recipient (see section 7.3) if they have reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs, of the Fund or the Trustee;
- Demonstrate the Trustee's commitment to managing matters of misconduct;
- Protect whistleblowers who disclose misconduct, without fear of dismissal; victimisation or other detriment; and
- Ensure that matters of misconduct are identified and dealt with appropriately and on a timely basis.

This Policy contains the procedures for whistleblowers who make disclosures under the *Corporations Act 2001*.

¹ RG 270.40

2. Responsibilities

This Policy applies to all employees, officers and in some cases, third parties who become aware of wrongdoing in relation to the Trustee that is reportable under this Policy.

2.1 Board

The roles and responsibilities of the Board in respect of this Policy include:

- Oversight and application of this Policy; and
- Authorise any variations to this Policy.

2.2 Audit and Risk Committee

The roles and responsibilities of the Committee (including Committee Chair) in respect of this Policy include:

- In the event the CEO or Chair of the Board is the subject of the investigation, decide on an appropriate response to the findings in the Investigations Report presented by the Whistleblower Investigations Officer (WIO). This may include addressing any unacceptable conduct and taking remedial action to prevent any future occurrences of the same misconduct; and
- Acknowledge the receipt of Investigations Reports for all disclosures.

2.3 Chief Executive Officer (CEO) or Chair of the Board

The roles and responsibilities of the CEO and Chair in respect of this Policy include:

- Decide on an appropriate response to the findings in the Investigations Report presented by the Whistleblower Investigations Officer (WIO). This may include addressing any unacceptable conduct and taking remedial action to prevent any future occurrences of the same misconduct; and
- Report to the Board on the Investigations Report and any action taken.

2.4 Employees

The roles and responsibilities of all employees is to have read and understood the requirements of this Policy.

2.5 Whistleblower Protection Officer (WPO)

The roles and responsibilities of the WPO, designated Trustee representative, in respect of this Policy include:

- Protect and safeguard the interests of whistleblowers;
- Appoint the WIO on a case by case basis, depending on the nature of the report to undertake the investigation; and
- Obtain independent financial, legal and operational advice as required.

2.6 Whistleblower Investigations Officer (WIO)

The roles and responsibilities of the WIO, designated Trustee representative, in respect of this Policy include:

- Conduct preliminary investigations into disclosures made by a whistleblower;

- Investigate the substance of the complaint to determine whether there is evidence in support of the matters raised or, alternatively, to refute the disclosure made.

3. Principles

The key principles that govern the Trustee's approach to the whistleblowers' regime are:

- The Trustee understands that whistleblowers play an important role in identifying and calling out misconduct that may harm consumers and the community and takes its responsibility very seriously;
- The Trustee must encourage those who become aware of wrongdoing to come forward with their concerns, while offered the necessary protection under law;
- The Board of the Trustee is ultimately responsible for the Whistleblower Policy as part of the broader risk management and corporate governance framework; and
- The Trustee regularly reviews the Policy to meet regulatory requirements and best industry practice, considering the size and nature of the organisation.

4. General Requirements

This Policy applies to all of the Trustee's whistleblowers.

5. Reporting and Monitoring

The Board will monitor on an annual basis the number of disclosable matters reported and the number of Investigations Reports to the Committee. The Board will also confirm that the confidentiality and whistleblower protections have been complied with as outlined in this Policy.

All investigation outcomes will be reported to, and monitored by, the Committee.

6. Document Review

The Whistleblower Policy will be reviewed in line with other Governance Framework Policies and Procedures. A report will be made to the Board of the outcome of each review and all recommended changes to the Policy.

Any variation to this Policy must be authorised by the Board.

7. Rules and Procedures

7.1 Disclosable matters²

The types of wrongdoing that can be reported under this Policy, and that qualify for protection under the Corporations Act, are referred to as 'disclosable matters'.

All whistleblowers are encouraged to disclose information to an *eligible recipient* (see section 7.3) if they have reasonable grounds to suspect that the Trustee, or an employee of the Trustee, has engaged in misconduct, an improper state of affairs or circumstances, or conduct that:

- is an offence under any law under APRA's or ASIC's supervision, including the Corporations Act, SIS Act, and Life Insurance Act;
- represents a danger to the public or financial system;

² RG 270.48; RG 270.51

- is a Commonwealth law offence punishable by at least one year's imprisonment; or
- is prescribed by regulation.

The following list provides examples of disclosable matters which may be considered misconduct and which should be reported under this Policy, whether actual or suspected:³

- Information indicating that a person does not meet the Trustee's Fit and Proper criteria;
- Information that the Trustee has not complied with SPS 520 – Fit and Proper;
- Dishonest, fraudulent, corrupt or unlawful conduct or practices;
- Misleading or deceptive conduct, including conduct which amounts to failure to comply with statutory accounting and reporting requirements;
- Money laundering and offences involving terrorism financing;
- Coercion, harassment or discrimination by, or affecting, any employee of the Trustee or its affiliates;
- Serious exploitation of staff that would be considered as modern slavery practices under the *Modern Slavery Act 2018*;
- Conduct endangering the health and safety of any person which has been reported to management but not acted upon;
- An "emergency disclosure" or "public interest disclosure" made to a journalist or a parliamentarian (see section 7.1.1 below);
- Any action taken against, or harm suffered by a person as a result of making a report under this Policy.

A matter may be a disclosable matter even if the conduct involved does not contravene any particular law.⁴

Information that suggests a significant risk to public safety or the stability of, or confidence in, the financial system is a disclosable matter, even if it does not involve a breach of a particular law.⁵

Disclosures that are not about disclosable matters do not qualify for protection under the Corporations Act.⁶

Personal grievances not protected by whistleblower laws

Personal, work-related grievances do not qualify for protection under the Corporations Act and are generally not covered under this Policy, unless victimisation (such as threatening to cause detriment to another person), is involved.⁷

Examples of personal, work-related grievances may include:⁸

- An interpersonal conflict between the whistleblower and another employee;
- A decision that does not involve a breach of workplace laws;

³ RG 270.55

⁴ RG 270.56

⁵ RG 270.56

⁶ RG 270.49

⁷ RG 270.60 & RG270.62

⁸ RG 270.61

- A decision about the engagement, transfer or promotion of the whistleblower;
- A decision about the terms and conditions of engagement of the whistleblower; or
- A decision to suspend or terminate the engagement of the whistleblower, or otherwise to discipline the whistleblower.

7.1.1 What are “public interest disclosures” and “emergency disclosures” and what are the criteria for making these disclosures?

A “public interest disclosure” is the disclosure of information to a journalist or a parliamentarian, where:

- (a) at least 90 days have passed since the discloser made the disclosure to ASIC, APRA or another Commonwealth body prescribed by regulation;
- (b) the discloser does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure;
- (c) the discloser has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
- (d) before making the public interest disclosure, the discloser has given written notice to the body to which the previous disclosure was made (see (a) above) that:
 - (i) includes sufficient information to identify the previous disclosure; and
 - (ii) states that the discloser intends to make a public interest disclosure.

An “emergency disclosure” is the disclosure of information to a journalist or parliamentarian, where:

- (a) the discloser has previously made a disclosure of the information to ASIC, APRA or another Commonwealth body prescribed by regulation;
- (b) 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;
- (c) before making the emergency disclosure, the discloser has given written notice to the body to which the previous disclosure was made (see (a) above) that:
 - (i) includes sufficient information to identify the previous disclosure; and
 - (ii) states that the discloser intends to make an emergency disclosure; and
- (d) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

If the whistleblower goes public with their concerns in another way, such as by posting on social media, they will not be protected.

7.2 Eligible Whistleblowers⁹

An individual to whom this Policy applies and who qualifies for protection under the Corporations Act is referred to as an ‘eligible whistleblower’.

⁹ RG 270.42

An individual is an *eligible whistleblower* in relation to the Trustee if the individual is, or has been, any of the following:¹⁰

- An officer of the Trustee (including directors and senior managers);
- An employee of the Trustee;
- A supplier of goods or services to the Trustee (paid or unpaid) or their employees;
- An associate of the Trustee (including directors or employees of a subsidiary company);
- An individual or an officer of a custodian or investment manager of the Trustee; and
- A relative or dependant or spouse of an individual of all of the above categories.

7.3 Eligible Recipients of Disclosures

To qualify for whistleblower protections, the whistleblower should report their concerns to people who can directly receive disclosures (referred to as 'eligible recipients').

An eligible recipient includes:¹¹

- APRA;
- ASIC;
- Any Commonwealth body prescribed by regulation;
- An officer of the Trustee;
- An auditor (internal or external), or a member of an audit team conducting an audit of the Trustee;
- An actuary of the Trustee;
- A Director of the Trustee;
- A person authorised by the Trustee to receive disclosures of misconduct;
- A senior manager of the whistleblower who is an employee of the Trustee;
- A lawyer for the purpose of legal representation regarding the whistleblower; and
- A parliamentarian or a journalist (where it is a public interest or emergency disclosure).¹²

"Public interest disclosures" and "emergency disclosures" are generally serious matters. Where a whistleblower is considering such a disclosure, as a first step, they must satisfy the criteria in section 7.1.1 and they should contact an independent legal adviser to discuss the matter.¹³

7.4. Criteria for Whistleblower protection¹⁴

Persons qualify for whistleblower protection if:

¹⁰ RG 270.44

¹¹ RG 270.64, RG 270.65, RG 270.69

¹² RG 270.74

¹³ RG 270.75 to RG 270.78

¹⁴ RG 270.45, RG 270.47

- (1) they are an eligible whistleblower (see section 7.2); and
- (2) the disclosure is made to an eligible recipient (see section 7.3); and
- (3) the disclosure is made in respect of suspected misconduct or an improper state of affairs and meets the definition of a disclosable matter (see section 7.1).

A person making a disclosure can still qualify for protection even if their disclosure turns out to be incorrect.¹⁵

Disclosures made to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the whistleblower provisions are protected, even if the practitioner concludes that the disclosure is not a “disclosable matter”.¹⁶

Similarly, disclosures to regulatory and other external bodies, and public interest and emergency disclosures made in accordance with the Corporations Act are also protected.¹⁷

Subject to the exceptions in section 7.9 of this Policy, anyone who discloses the identity of a whistleblower, or who discloses information likely to lead to the identification of a whistleblower, faces a civil or criminal penalty. Complaints about breaches of confidentiality may be made to any party listed in section 7.3. Complaints can at any time be lodged with a regulator such as APRA, ASIC or the ATO.¹⁸

The information received from the whistleblower may be disclosed if it is reasonably necessary to investigate the information, and if reasonable steps are taken to reduce the risk that the whistleblower will be identified if the information is disclosed.

Anyone who makes a protected disclosure is protected from civil, criminal or administrative liability for making the disclosure unless they took part in the misconduct.¹⁹

7.5 Anonymous disclosures

Whistleblowers are not obliged to disclose their identity.²⁰ Disclosures that are made anonymously are still protected under the Corporations Act.²¹ This can apply while making the disclosure, during the investigation, and after the investigation is finalised.²²

It is advisable for the whistleblower in these cases to maintain ongoing two-way communication with the recipient, so follow-up questions and feedback can take place.²³ If the investigating officer is unable to communicate with the whistleblower, it may not be possible to continue with the investigation.²⁴

Anonymous disclosures can be made by completing the Whistleblower Disclosure Form (WDF) and forwarding it to the WPO by mail. A pseudonym may be used in this case.²⁵

7.6. Self-incrimination

A person is not excused from complying with a requirement under the SIS Act or the *Financial Sector (Collection of Data) Act 2001* to give information to APRA on the ground

¹⁵ RG 270.57

¹⁶ RG 270.72

¹⁷ RG 270.89

¹⁸ RG 270.94

¹⁹ RG 270.88 (d), RG 270.104, RG 270.105

²⁰ RG 270.88 (a)

²¹ RG 270.83

²² RG 270.84

²³ RG 270.84

²⁴ RG 270.119

²⁵ RG 270.86

that doing so would tend to incriminate the person or make the person liable to a penalty. However, any information given by an individual in compliance with the requirement may not be admissible in evidence against the individual. Refer to www.apra.gov.au for more information.

7.7. Investigation

All reports of misconduct or an improper state of affairs will be treated seriously. They will be the subject of a thorough investigation, aiming to locate evidence that either substantiates or refutes the claims made by the whistleblower. The timeframes set for the investigation will vary depending on the nature of the disclosure.²⁶

7.8. Reporting of Investigation Findings²⁷

At the end of the investigation, the WIO will report their findings to the Chair or CEO who will decide on the appropriate response. This response will include addressing any unacceptable conduct and taking remedial action required to prevent any future occurrences of the same misconduct. Confidentiality will be respected. The Chair or CEO will report the findings and any actions taken to the Board.

In the event that the Chair or CEO of the Trustee is the subject of an allegation, the Chair of the Audit and Risk Committee will review the report and determine corrective measures. All investigation outcomes will be reported to the Committee.

The method for documenting and reporting the findings of the investigation will depend on the nature of the disclosure. There may be circumstances where it may not be appropriate to provide details of the outcome to the whistleblower. A confidential whistleblower register is to be maintained.

The whistleblower will be provided with updates where a communication channel is available that is secure and protects anonymity, as to the progress of the investigation and at its conclusion.

An employee who is the subject of a disclosure will be advised about the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness. This will be done prior to any actions being taken unless doing so would compromise the investigation effectiveness.²⁸

7.9. Whistleblower Confidentiality

The Trustee has a legal obligation to protect the confidentiality of a discloser's identity, should the individual request confidentiality. This includes disclosing information that is likely to lead to the identification of the discloser.

Where a whistleblower has identified themselves, the Trustee has a legal obligation to protect their confidentiality²⁹ unless the disclosure is:³⁰

- with the consent of the discloser.
- to ASIC, APRA, or a member of the Australian Federal Police;
- to a person or body prescribed by regulations; or

²⁶ RG 270.117

²⁷ RG 270.123; RG 270.124

²⁸ RG 270.125

²⁹ RG 270.90

³⁰ RG 270.92

- to a legal practitioner, for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the Corporations Act.

Subject to the above exceptions, no person can disclose the identity of a whistleblower, or information that is likely to lead to the identification of the disclosure.³¹ Each person involved in handling the disclosure will be reminded about confidentiality requirements, including that an unauthorised disclosure of the whistleblower's identity may be a criminal offence.³²

The only situations where a person can disclose information contained in a disclosure with or without the whistleblower's consent is where:³³

- The information does not include the whistleblower's identity;
- The Trustee has taken all reasonable steps to reduce the risk that the whistleblower will be identified from the information; and
- It is reasonably necessary for investigating the matter.

7.10. Victimisation

The Corporations Act makes victimisation of whistleblowers a crime.³⁴ Someone who suffers damage as a result of victimisation may be entitled to seek compensation through the Courts.³⁵ With some limited exceptions, whistleblowers are protected from an award of costs against them where they seek compensation.³⁶ Whistleblowers are encouraged to seek independent legal advice.³⁷

A person cannot engage in victimising conduct if that person suspects that a whistleblower has made, or intends to make, a disclosure that qualifies for protection.³⁸

Victimising conduct includes:³⁹

- Dismissal from the whistleblower's position;
- Injury;
- Demotion or adjusting the position or employment duties to the whistleblower's disadvantage;
- Discrimination;
- Harassment, persecution or intimidation;
- Psychological harm;
- Damage to the whistleblower's property, reputation or business / financial position;
- Detrimental acts or omissions;⁴⁰ and
- Other damage to a person.

³¹ RG 270.91; RG 270.118

³² RG 270.108

³³ RG 270.93; RG 270.118

³⁴ RG 270.41

³⁵ RG 270.95, RG 270.102

³⁶ RG 270.88 (c)

³⁷ RG 270.103

³⁸ RG 270.96

³⁹ RG 270.98; RG 270.99

⁴⁰ RG 270.88 (b)

Threats, whether expressed or implied, conditional or unconditional, to carry out any of the above behaviours are regarded as victimising conduct.⁴¹

Any employee, director, contractor or consultant who is found to have partaken in victimising conduct by reason of their status as a whistleblower may be subjected to civil penalties or criminal prosecution, and/or internal disciplinary measures.

A whistleblower that reports eligible disclosures, provided he or she has not been involved in the misconduct reported, will not be penalised or personally disadvantaged because they have reported a matter.

A whistleblower who has been involved in the reported misconduct may be provided with immunity or due consideration from the Trustee initiated disciplinary proceedings, by agreement with the Trustee. However, the Trustee has no power to provide immunity from criminal prosecution.

A whistleblower who believes he or she, or his or her family, has been subject to victimising conduct by reason of their status as a whistleblower, should immediately report the matter to the WPO. Where an incident of this nature occurs, the Anti-Workplace Bullying and Harassment Policy and Code of Conduct will apply.⁴²

In addition, the whistleblower may seek independent legal advice or contact regulatory bodies such as ASIC, APRA or the ATO if they believe they have suffered detriment as a result of the disclosure.⁴³

What is not 'victimisation'⁴⁴

The following behaviours are not regarded as victimisation, provided they are not related to, or a result of, a whistleblower's disclosure or intended disclosure:

- reasonable actions arising from performance appraisals
- ongoing meetings to address underperformance
- counselling or disciplining a worker for misconduct
- modifying a worker's duties including transferring or re-deploying staff
- investigating complaints
- denying a worker a benefit in relation to their employment, or
- refusing an employee permission to return to work due to a medical condition.

7.11. Feedback and Communication with the Whistleblower

Where possible, and assuming the identity of the whistleblower is known, the whistleblower will be kept informed of the outcome of the investigation of his or her report, subject to privacy, legislation and confidentiality considerations.⁴⁵

The frequency and timeframe of the updates will vary depending on the nature of the investigation.⁴⁶

⁴¹ RG 270.97

⁴² RG 270.106; RG 270.109

⁴³ RG 270.110

⁴⁴ RG 270.100

⁴⁵ RG 270.121

⁴⁶ RG 270.121

All whistleblowers must maintain confidentiality of all such reports, and not disclose details to any person.

7.12. Document Retention and Confidentiality⁴⁷

All information, documents, records and reports relating to the investigation of a reported misconduct will be confidentially stored and retained in an appropriate and secure manner.

Access to information relating to the investigation will be limited to those involved in managing the investigation.

7.13 Access to Whistleblower Policy⁴⁸

The Trustee is committed to promoting this Policy and will ensure it is provided to all new employees as part of their induction process.

Regular refresher sessions are held as part of employee professional development training.

⁴⁷ RG 270.123, RG 270.124

⁴⁸ RG 270.128, RG 270.129, RG 270.131

Appendix A: Procedure for making a disclosure⁴⁹

The following procedure contains information to users of this Policy on how to make a disclosure. It provides internal and external disclosure options to allow users to make the disclosure anonymously, confidentially and securely.

If a whistleblower has reasonable grounds to suspect misconduct or an improper state of affairs has occurred in relation to the Trustee, then the following disclosure mechanisms are available:⁵⁰

Internal disclosure

Whistleblowers may wish to discuss the matter informally with the Chair, CEO or a senior manager first to determine whether misconduct or an improper state of affairs in relation to the Trustee, has occurred.

This is an opportune time to clarify the matter, ask questions and become familiar with the process. Discussions, and the identity of the whistleblower, must be kept confidential.

Another option is for the whistleblower to approach the internal auditor.

Alternatively, the whistleblower may contact the WPO directly to discuss the matter, seek additional information,⁵¹ or submit a completed Whistleblower Disclosure Form (WDF) to the WPO.

If choosing to remain anonymous, the whistleblower can submit a completed WDF directly to the WPO.

External disclosure

The whistleblower may disclose the matter to APRA or ASIC. Each of them will receive and protect anonymous disclosures.

Contact details can be found on their websites:

apra.gov.au

asic.gov.au – [Make a report of misconduct to ASIC](#)

For information about tax whistleblower arrangements, see the ATO website:

ato.gov.au – [Tax whistleblowers](#)

⁴⁹ RG 270.79 & RG 270.82

⁵⁰ RG 270.64 & RG 270.80

⁵¹ RG 270.66