



Australian Government

Commonwealth Superannuation Corporation

Whistleblower Protection & Public Interest Disclosure Policy

CSC supports the protection of whistleblower disclosures. The requirements and protections available to whistleblowers are provided for under the following legal provisions:

- the Corporations Act 2001 (Corporations Act) and ASIC Regulatory Guide 270: Whistleblower Policies
- the Australian Prudential Regulation Authority (APRA) Prudential Standards for Superannuation, particularly Prudential Standard SPS 510 Governance and SPS 520 Fit and Proper, and
- the Public Interest Disclosure Act 2013 (PID Act) and the Public Interest Disclosure Standard (PID Standard).

This Policy will address these requirements.

Purpose

This Whistleblower Protection & Public Interest Disclosure Policy (Policy) is important to good risk management and corporate governance. Whistleblowing helps uncover misconduct that may not otherwise be detected. In some cases, wrongdoing only comes to light because individuals are prepared to make disclosures, sometimes at great personal and financial risk. The purpose of this Policy is to:

- Improve whistleblowing culture
- Ensure appropriate disclosures
- Provide comfort to individuals who disclose wrongdoing, that they will be protected and supported
- Deter wrongdoing by increasing the likelihood that wrongdoing will be reported
- Promote better compliance, and
- Increase transparency in how CSC handles disclosure of wrongdoing.

Culture of disclosure

Compliance incident and breach reporting

CSC strongly supports and encourages staff to disclose and report any incidents and breaches of law. Incidents relating to and breaches of internal policies, and contraventions of law, including Scheme rules, are required to be reported through existing processes in accordance with CSC's Breach and Compliance Policy. Where an incident has given rise to a significant breach of law, actual or potential, the General Counsel team must be immediately notified in accordance with the Breach and Compliance Policy. CSC is required to adopt these practices as an Australian Financial Services (AFS) licensee (AFS licensee no 238069) and a Registrable Superannuation Entity (RSE) licence holder (RSEL no L0001397).

This culture and regulatory environment encourages the early prevention and detection of issues. Reporting and capturing incidents, whether or not they have resulted in a breach of law, encourages information to be brought to light so that any incidents or breaches can be addressed and rectified.

Human resources policies and guidelines

HR issues, for example regarding the code of conduct, appropriate workplace behaviour, work health and safety, resolving workplace grievances and disputes, recruitment, discrimination, harassment and victimisation will be addressed through the processes outlined in HR policies and guidelines.¹

Whistleblower and PID provisions

Eligible whistleblowers can make whistleblower disclosures and PIDs. If whistleblowers wish to seek protection then they must adopt the processes outlined in the Corporations Act, APRA regulatory requirements, or the PID Act and Standard. More information on PID provisions is available at ombudsman.gov.au

To be protected, certain conditions need to be met and processes followed, as set out in the relevant legislation or regulatory requirement. Any person who is concerned about whistleblower protection and is unsure if the law can protect him/her should seek legal advice.²

The following table outlines how issues should be reported.

Issues	How they should be reported
Any incidents and breaches of law, for example a breach of Scheme rules	In accordance with the Breach and Compliance Policy.
Significant breaches of law, actual or potential	Immediately to the General Counsel team in accordance with the Breach and Compliance Policy.
HR issues, for example WH&S, recruitment, harassment and resolving workplace grievances and disputes	In accordance with HR policies and guidelines.
When making a whistleblower disclosure or a PID in accordance with the relevant law, for example disclosures of corruption, unethical or improper conduct	In accordance with this Whistleblower Protection & Public Interest Disclosure Policy.

¹ For further guidance regarding personal work-related grievances in a whistleblower context, see RG270.58.

² Disclosures to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions are protected (even in the event that the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter').

What is whistleblowing?

Whistleblowing can be defined as “Disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action.”³

Examples of whistleblowing and PIDs that can be reported include:

- conduct that contravenes a law, including a breach of the Corporations Act, the Australian Securities and Investments Commission Act 2001 (ASIC Act) and the Superannuation Industry (Supervision) Act 1993 (SIS Act)
- breaches of conflicts of interest or fit and proper policies,
- bribery, money laundering, misappropriation of funds, financial irregularities,
- dishonest, fraudulent, corrupt, unethical or improper conduct, and
- conduct that may cause financial or reputational loss to CSC.

Note that the PID Act and Standard do not use the term ‘whistleblower’. However this term has been used in this Policy when referring to a person who makes a disclosure under any law, including the PID Act, for consistency and ease of understanding.

Who can make a whistleblower disclosure?

Under the Corporations Act⁴ whistleblower disclosures can be made by eligible whistleblowers. The following individuals are eligible whistleblowers if they are, or have been:

- an officer, employee, or associate of CSC (including a director or a contractor)
- an individual who supplies services or goods to CSC (whether paid or unpaid)
- an individual who is a trustee, custodian or investment manager of CSC
- an employee of any of the above
- a relative or dependent of any of the above (this includes a spouse, parent or other linear ancestor, child or grandchild, and sibling) or
- an individual prescribed by the regulations.

Under the PID Act, current or former public officials can make whistleblower disclosures. A current or former public official is any person who is or was employed by CSC, directors and service providers under contract to CSC⁵.

³ Near, J.P. and M.P. Miceli. 1985. ‘Organizational Dissidence: The Case of Whistle-blowing’. *Journal of Business Ethics*, February, 4(1), pp. 1-16.

⁴ Corporations Act s 1317AAA.

⁵ PID Act ss 26 & 30.

What whistleblower disclosures are protected?

Under the Corporations Act

Under the Corporations Act⁶ the whistleblower can make a disclosable matter regarding information they have reasonable grounds to suspect:

- concerns misconduct, or an improper state of affairs or circumstances, in relation to CSC,
- indicates that CSC or its officer or employee has engaged in conduct that constitutes an offence against, or a contravention of, the Corporations Act, the ASIC Act, the Banking Act, the Data Collection Act, the Insurance Act, the Life Insurance Act, the National Consumer Credit Protection Act, the SIS Act, or regulations made under those laws,
- 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, or
- is prescribed by regulations.

Under the PID Act

To be protected under the PID Act, disclosure needs to be information that is believed on reasonable grounds to show disclosable conduct. This means conduct by an agency, a public official or a contracted Commonwealth service provider (in connection with the contract) that:

- contravenes a law
- is corrupt
- perverts the course of justice
- results in wastage of public funds
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- is misconduct relating to scientific research, analysis or advice
- is maladministration, including conduct that is unjust, oppressive or negligent, or
- results in a danger to the environment or increases a risk of danger to the environment⁷.

Disagreeing with government policy, action or expenditure is not disclosable conduct under the PID Act. Judicial conduct and the proper activities of intelligence agencies are also excluded.

⁶ Corporations Act s 1317AA(4) and (5).

⁷ PID Act s 29.

IMPORTANT:

- A whistleblower can still qualify for protection, even if their disclosure turns out to be incorrect.
- BUT disclosures that are not about 'disclosable matters' or 'disclosable conduct' **do not qualify for protection** under the Corporations or PID Act.

Example: A whistleblower who discloses that CSC has been operating illegally will still be protected if it turns out that CSC was not acting illegally. But, a disclosure about a workplace grievance (such as an issue with a supervisor) is not about a disclosable matter and so would not entitle a person to whistleblower

Anonymous disclosures

Whistleblower disclosures under the Corporations and PID Acts can be made anonymously.⁸ However, investigations have a greater chance of success where a name is provided. To assist in any potential investigations where an anonymous disclosure is made, full details of the alleged breach must be disclosed to the extent known.⁹

Who to report to

A disclosure can be made directly to one of the below people to be able to qualify for protection as a whistleblower.

Executives

Staff are encouraged to report whistleblower disclosures first to their executive who is a member of the executive group, or to another executive if their executive is the subject or the disclosure or may be conflicted.

Preliminary inquiries may be conducted by the relevant executive and further information sought to determine whether a matter is to be investigated.

Supervisors

PID Act disclosures can also be made to a supervisor¹⁰, who must pass the information onto an executive, as soon as reasonably practicable if they reasonably believe that the information could concern disclosable conduct.

⁸ A person may remain anonymous while making a disclosure, as well as during and after an investigation. The person can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations.

⁹ CSC recommends that an anonymous whistleblower who wishes to remain anonymous should maintain ongoing two-way communication with CSC, so CSC can ask follow-up questions or provide feedback. In practice, this usually means providing an email address or phone number from which a person's identity cannot be determined.

¹⁰ Note: This only applies to PID disclosures. Corporations Act s 1317AAC does not allow a supervisor or manager to receive a disclosure (a more senior person is required: a 'senior manager'). Please note a person at CSC whose *position title* is Senior Manager does not meet the legislative definition. RG270.71 clarifies that a 'senior manager' for the purposes of the Corporations Act 'is generally a senior executive'.

Chair of the Audit Committee

Whistleblower disclosures can also be made to the Chair of the Audit Committee. The Chair of the Audit Committee can request that the General Counsel, internal auditor or an independent party investigate the matter.

Reporting to other persons

Where the whistleblower disclosure is made under the Corporations Act, a disclosure may be made to:

- an officer, auditor, a member of an audit team, or actuary;
- the executive manager of a whistleblower who is an employee of CSC;
- a trustee, director or person authorised by the trustees to receive disclosures that may qualify for protection; or
- other persons prescribed by regulations (including ASIC and APRA).¹¹

Emergency disclosures and public interest disclosures

A disclosure can be made under the Corporations Act¹² to a member of the Parliament of the Commonwealth, a State or a Territory, or to a journalist in **limited circumstances** where:

- a disclosure of information is initially reported to ASIC or APRA, and
 - the whistleblower provides ASIC or APRA written notification that includes sufficient information to identify the previous disclosure and states that the whistleblower intends to make an emergency or public interest disclosure, and
- for public interest disclosures:
 - 90 days have passed since that disclosure, and
 - the whistleblower does not have reasonable grounds to believe that action is being, or has been, taken, and
 - the whistleblower has reasonable grounds to believe that making a further disclosure of the information would be in the public interest.
 - for emergency disclosures:
 - the whistleblower 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, if the information is not acted on immediately.

Direct reporting to the Inspector-General of Intelligence and Security (IGIS) or to the Commonwealth Ombudsman

Public interest disclosures can be made directly to the IGIS (in relation to an intelligence matter) or to the Commonwealth Ombudsman (in relation to other government agencies) if it is believed on reasonable grounds that it is appropriate for those agencies to investigate instead. There are however restrictions on information that can be disclosed. Information must not be more than what is reasonably necessary to identify the wrongdoing, cannot be

¹¹ Corporations Act s 1317AAC.

¹² Corporations Act s 1317AAD.

disclosed to a foreign public official, and intelligence information, including sensitive law enforcement information, cannot be disclosed. It is not expected that intelligence matters will be relevant to CSC.

CSC reporting to the Commonwealth Ombudsman

CSC is required to report to the Commonwealth Ombudsman where a public interest disclosure has been received and allocated for investigation, determined not to require further investigation or where CSC is seeking an extension of time to conduct an investigation.

How disclosures can be made

A disclosure can be made via the communication channel the whistleblower feels is most appropriate (for example: email, mail, phone, or in person). The whistleblower should ensure the disclosure is made confidentially and securely.

Before making a disclosure, staff are encouraged to seek advice from CSC's General Counsel Team on the process for making disclosures to ensure that any disclosure is best handled as a whistleblower complaint.

Investigation

Key steps involved in investigating a disclosure

The investigation process varies, depending on the subject matter of the disclosure. Key steps may include:

- Assess each disclosure to determine whether it qualifies for protection;
- Determine whether a formal, in depth investigation is required;
- Ascertain the nature and scope of the investigation;
- Identify the persons within and outside CSC that should lead the investigation;
- Obtain any technical, financial or legal advice that may be required to support the investigation;
- Gather evidence;
- Undertake steps to enhance procedural fairness, independence and investigation best practice;
- Analyse the relevant facts and law; and
- Report findings.

Investigation timeframes vary, depending on the nature of the investigation. At the beginning of an investigation, a timeframe will be set, with sufficient time allocated to each step. A whistleblower will be given updates throughout the investigation.¹³

Whistleblowers

¹³ If the whistleblower can be contacted (including through anonymous channels). The frequency and timeframe may vary depending on the nature of the disclosure. Usual stages include: when a disclosure is acknowledged, when an investigation has begun, is in progress, and after an investigation has been finalised.

Whistleblowers must use their best endeavours to assist in the conduct of an investigation¹⁴.

Delegation of the investigation

The investigation can be delegated to another party, either external or internal. For example, an independent person or company can be requested to undertake the investigation. This may also be necessary to effectively manage the risk of real or perceived bias or conflict of interest in the handling of a particular matter¹⁵. Internal parties that can investigate the disclosure include all the people to whom disclosures are made.

Report on the outcome of the investigation

Following an investigation, a report on the outcome will be provided to the person making the disclosure, the Chief Executive Officer, the Chair of the Board, the Chair of the Audit Committee, the Board and/or the Audit Committee, as appropriate.¹⁶

Action in relation to any recommendations

Appropriate action will be initiated based on the outcome of the investigation. This may include notifying regulators, developing new or revised practices or procedures to address systemic issues, internal audits, staff training, counseling or disciplinary action, or referral to the police if criminal conduct is involved.

PID whistleblower disclosures determined not to require further investigation

PID whistleblower disclosures can be determined not to require further investigation in the following circumstances:

- the identity of the person cannot be established or further information cannot be provided, such that it is impractical for the disclosure to be investigated
- the disclosure is not made by a current or former public official
- the information does not concern serious disclosable conduct
- the disclosure is frivolous or vexatious, or
- the disclosure is the same or substantially the same as a disclosure already investigated or currently being investigated under another Commonwealth law, and it would be inappropriate to conduct another investigation at the same time, or there are no matters that warrant further investigation.

Dissatisfaction with the outcome or handling of the matter

Where a whistleblower remains dissatisfied with the outcome of a whistleblower disclosure made under the Corporations Act he or she may refer the matter to ASIC. Where a whistleblower remains dissatisfied with the outcome of a whistleblower disclosure he or she may refer the matter to APRA. A public official who has made a PID whistleblower disclosure

¹⁴ PID Act s 61.

¹⁵ Agency Guide to the *Public Interest Disclosure Act 2013* (Version 2, 2016), p. 46.

¹⁶ Confidentiality will be preserved.

can complain to the Commonwealth Ombudsman if they believe that CSC did not appropriately deal with it¹⁷.

What protection and support is provided?

Protections under the Corporations Act

The following protections apply to a whistleblower:¹⁸

1. protection of their identity, including information likely to disclose their identity¹⁹
2. immunity from liability, including protection against civil, criminal or administrative liability (including disciplinary action) for making a disclosure,
3. protection from victimisation,²⁰
4. compensation and other remedies.²¹

PID Act protections:

1. protection of the whistleblower's identity
2. immunity from civil, criminal or administrative liability
3. support and protection from reprisal, and
4. recourse to court for remedies for reprisal action.

Staff support²²

Staff will be provided with support and protection from detriment and reprisal, and will not be victimised.²³

Victimisation may result in criminal and/or civil legal action.

Appropriate personal and organisational support will be provided, and advised on early in the process. Consideration will be given to appointing a support person who can listen and

¹⁷ *Ombudsman Act 1976* ss 5 & 5A.

¹⁸ The protections apply not only to internal disclosures, but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Corporations Act.

¹⁹ There are exceptions: Corporations Act s 1317AAE(2) and 1317AG.

²⁰ This is where the victimiser engages in conduct that causes or threatens to cause any detriment to another person. This also extends to victimisation of a person who: 1. may make a whistleblower disclosure in the future, or 2. is suspected or believed to be a whistleblower. The belief or suspicion about a disclosure or possible disclosure must be part of the reason for the victimising conduct but does not have to be the only reason.

²¹ A whistleblower (or any other employee or person) can seek compensation and other remedies through the courts if they suffer loss, damage or injury because of a disclosure and CSC failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

²² This applies to both disclosers and to staff the subject of any investigation.

²³ Information on what constitutes victimisation is available at ombudsman.gov.au (see links to tools/information for agencies)

provide counselling, and where appropriate, accompany that person to interviews and meetings related to the investigation. The Employee Assistance Program is available to staff.

Situations where liability will still occur

Whistleblowers will be liable for knowingly making a disclosure of information that is false or misleading²⁴.

Making a whistleblower disclosure also does not exclude a person from being reasonably managed or disciplined for any unsatisfactory performance or disclosable conduct on their part, and it does not protect the person from liability for their own wrongdoing.

Any person who is concerned about whistleblower protection and is unsure if the law can protect him/her should seek legal advice.

Keeping information confidential

Identity protection of a whistleblower and a person who is the subject of allegations or an investigation

Once a disclosure is made, any persons involved are required to keep all relevant information confidential and only provide information or discuss the matter on a 'need to know' basis.

Information that identifies a whistleblower and a person who is the subject of allegations or an investigation should only be passed to those involved in the investigation or in taking other necessary action under the relevant law²⁵. If a person's identity needs to be disclosed or is likely to become apparent, CSC will discuss this with the person. It is also difficult to ensure protection from reprisal if CSC is not aware of the person's identity.

Disclosure of a whistleblower's identity may result in criminal and/or civil legal action. Measures for protecting the confidentiality of a whistleblower's identity may include:

- redacting personal information
- referring to the whistleblower in gender-neutral terms
- identifying certain aspects of the disclosure that could inadvertently identify the whistleblower
- handling by qualified staff, and
- access controls and secure storage of information.

²⁴ The PID Act also specifies that liability will still occur where knowingly breaching a PID designated publication restriction without reasonable excuse.

²⁵ For example action to minimise the risk of reprisal against the whistleblower; Agency Guide to the *Public Interest Disclosure Act 2013* (Version 2, 2016), p. 51.

Use of information under the Corporations Act

Under the Corporations Act²⁶ the identity of the whistleblower, including information that is likely to lead to the identification of the whistleblower, whether directly or indirectly obtained, will be kept confidential.

Information regarding the whistleblower's identity, including information that is likely to lead to the identification of the whistleblower, can be released where:

- consent is obtained from the whistleblower
- it is required to be released by law
- it is determined that the matter requires further investigation by a third party, such as ASIC, APRA, or the Australian Federal Police²⁷
- it is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to a whistleblower disclosure, or
- it is disclosed to a court or tribunal where the court or tribunal thinks it necessary in the interests of justice to do so.

Information that is likely to lead to the identification of the whistleblower under the Corporations Act can be released where it is reasonably necessary for the purposes of investigating the disclosure and all reasonable steps are taken to reduce the risk that the whistleblower will be identified.

Use of information under the PID Act

Under the PID Act information, including protected information, obtained in the course of conducting an investigation or in connection with a person's powers and functions under the PID Act must not be disclosed or used unless:

- the disclosure or use of the information is for the purposes of the PID Act or in connection with the person's powers and functions under the PID Act, this includes reporting to the Australian Federal Police if there are reasonable grounds to suspect an offence against a law
- the disclosure or use is for the purposes of, or in connection with, taking action in response to a disclosure investigation, and
- the information has previously been lawfully published and is not intelligence information, or if it is intelligence information, the principal officer of the source agency for the information has consented to the disclosure or use²⁸.

Processes to assist in ensuring confidentiality

To minimise the possibility of detrimental action against the whistleblower and others, including witnesses, CSC will ensure that:

²⁶ Corporations Act s 1317AAE.

²⁷ Note that under the Corporations Act disclosure made by ASIC, APRA or the AFP to a Commonwealth or State or Territory authority is permitted for the purpose of assisting the authority in the performance of its functions or duties.

²⁸ PID Act ss 65(1) & s 65(2).

- all paper and electronic documents and files are secure and only able to be accessed by authorised officers, investigators and other officers involved in managing the disclosure
- other materials such as interview tapes are stored securely with access only by officers involved in handling the disclosure, and
- communications and documents relating to the investigation are not sent to an email address to which other staff have access or to a printer or fax machine in an open area²⁹.

Record keeping

Records will be kept regarding any whistleblower disclosure. For example:

- any notification and communication provided by and to the whistleblower, including the date, time, means and content of notification and communication
- decisions made and reasons for decision
- documenting any legitimate disciplinary or management action to address a whistleblower's performance
- any allegations of reprisal or threatened reprisal
- the risk assessment process – consultation (including with the whistleblower), considerations, findings, recommendations and any revisions, and
- actions taken to address reprisal (or reprisal risk) and recommendations from a report of investigation.

Communication

This Policy is made available on the Intranet and on the CSC website.

Review

This Policy will be reviewed by the Board Governance Committee biennially or as required, in particular in the light of relevant regulatory initiatives or any significant changes to CSC's constituent legislation or business objectives, to assess its continuing currency. The committee will recommend to the Board for its approval any necessary or desirable amendments to ensure the Policy remains current and consistent with best practice and applicable law.

Date	Author	Comments
May 2013	General Counsel Group	Corporations Act, APRA's Prudential Practice Guide SPG 520 Fitness and Propriety. Approved by the Board.
October 2014	General Counsel Group	Compliance with PID Act Recommended by the Board Governance Committee 10 September 2014; reviewed by the Board on 22 October 2014; Approved by the Board 3 December 2014

²⁹ Agency Guide to the *Public Interest Disclosure Act 2013* (Version 2, 2016), p. 51.

25 July 2017	General Counsel Team	Biennial review. Board Governance Committee meeting 15 June 2017; approval by Board 25 July 2017.
4 June 2019	General Counsel Team	Compliance with the <i>Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2018</i> which amended the Corporations Act and came into effect on 1 July 2019. Reviewed at Board Governance Committee meeting 3 June 2019; approved by Board 4 June 2019.
19 March 2020	General Counsel Team	Compliance with <i>ASIC Regulatory Guide 270: Whistleblower Policies</i> , which was released in November 2019. Reviewed at Board Governance Committee meeting 3 February 2020; approved by Board 19 March 2020

Reporting and disclosure flow chart

Can be reported to:

- a member of the executive group (an 'executive')
- the CEO, or
- a supervisor of a PID whistleblower,
- or if a disclosure is made under the Corporations Act, a person outlined in s 1317AAC or 1317AAD

The Chair of the Board will be informed of all reported disclosures (except where the disclosure relates to the Chair).

Can also be reported to:

- the Chair of the Audit Committee.
- In certain circumstances reports can also be directly made to the Commonwealth Ombudsman, APRA, ASIC, auditors or actuaries



Assessment and potential investigation of the whistleblower disclosure (internal or external)

Outcome reported to:

- the whistleblower
- the CEO
- the Chair of the Board, the Chair of the Audit Committee

Incidents and breaches of law are required to be reported through existing processes in accordance with the Breach and compliance policy.

HR issues are to be addressed through the processes outlined in HR policies and guidelines.

! The General Counsel team must be immediately notified where the disclosure indicates a significant or potentially significant breach.

Whistleblower or PID disclosures, for example disclosures of corruption, unethical or improper conduct, need to be made in accordance with the relevant law. If staff and directors wish to seek protection then they must adopt the processes outlined in the Corporations Act, APRA regulatory requirements, or the PID Act and Standard.

! To be protected, certain conditions need to be met and processes followed, as set out in the relevant legislation or regulatory requirement. Any person who is concerned about whistleblower protection and is unsure if the law can protect him/her should seek legal advice.