



# 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)
  - the *Superannuation Industry (Supervision) Act 1993* (SIS Act)
  - 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.

## Culture of disclosure

### Compliance incident and breach reporting

**Strong support for staff to disclose and report any incidents and breaches:** 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 the disclosure is a significant breach of law, actual or potential, the General Manager, Corporate 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).

**A culture of early prevention and detection:** 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

**Human resources (HR) issues:** 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.

### Whistleblower and PID provisions

**Whistleblower and PID requirements and protections:** Staff and directors can make whistleblower disclosures and PIDs. If staff and directors wish to seek protection then they must adopt the processes outlined in the Corporations Act, the SIS 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.

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 <b>Breach and compliance policy</b> .
Significant breaches of law, actual or potential	Immediately to the General Manager, Corporate in accordance with the <b>Breach and compliance policy</b> .
HR issues, for example WH&S, recruitment, harassment and resolving workplace grievances and disputes	In accordance with <b>HR policies and guidelines</b> .
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 the <b>Whistleblower protection and public interest disclosure policy</b> .

## What is whistleblowing?

**Definition:** Whistleblowing can be defined as<sup>1</sup> “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.”<sup>2</sup>

**Examples of whistleblowing and public interest disclosures (PIDs):** 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 SIS Act
- breaches of conflicts of interest or fit and proper policies
- 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.

<sup>1</sup> Please note this is not a legal definition that outlines protections under the law – it is provided as a guide only to explain the concept.

<sup>2</sup> 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.

## Who can make a whistleblower disclosure?

**Who can make a whistleblower disclosure under the Corporations Act?** Under the Corporations Act<sup>3</sup> whistleblower disclosures can be made by current officers (this includes directors), employees and contractors.

**Who can make a whistleblower disclosure under the SIS Act?** Under the SIS Act<sup>4</sup> whistleblower disclosures can be made by current employees, directors, an officer or employee of CSC's custodian, an officer of or employee of an investment manager of CSC, and a contractor or employee of a contractor of CSC.

**Who can make a PID whistleblower disclosure?** Current or former public officials can make whistleblower disclosures under the PID Act. A current or former public official is any person who is or was employed by CSC, directors and service providers under contract to CSC<sup>5</sup>.

## What whistleblower disclosures are protected?

**What whistleblower disclosure is protected under the Corporations Act?** Under the Corporations Act<sup>6</sup> the whistleblower:

- is required to have reasonable grounds to suspect that the information indicates a contravention of Corporations legislation
  - make the disclosure in good faith,
- and
- needs to disclose their name before making the disclosure.

**What whistleblower disclosure is protected under the SIS Act?** Under the SIS Act<sup>7</sup> the whistleblower disclosure needs to be:

- be information that concerns misconduct, or an improper state of affairs or circumstances, in relation to CSC
  - be information that may assist a person who can receive a whistleblower disclosure in performing their functions in relation to CSC
  - be made in good faith,
- and
- the whistleblower needs to disclose their name before making the disclosure.

**What whistleblower disclosure is protected 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 environment<sup>8</sup>.

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<sup>3</sup> Corporations Act s 1317AA.

<sup>4</sup> SIS Act s 336A(1).

<sup>5</sup> PID Act ss 26 & 30.

<sup>6</sup> Corporations Act s 1317AA.

<sup>7</sup> SIS Act s 336A(2).

<sup>8</sup> PID Act s 29.

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.

## Anonymous disclosures

Can I make an anonymous disclosure? Whistleblower disclosures under the PID Act can be made anonymously. Reports relating to breaches of the SIS and Corporations Act cannot be made anonymously and full details of the alleged breach must be disclosed to the extent known.

## Who to report to

Who can I make a whistleblower disclosure to? Staff are encouraged to report whistleblower disclosures first to their General Manager, or to another General Manager if their General Manager is conflicted.

**Reporting to a supervisor:** PID whistleblower disclosures can also be made to a supervisor, who must pass the information onto a General Manager, as soon as reasonably practicable if they reasonably believe that the information could concern disclosable conduct.

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

**PID Act and standards:** PID disclosures are to be received, assessed and investigated in accordance with the PID Act and standards issued by the Commonwealth Ombudsman. Under the PID Act there are various requirements where a PID whistleblower disclosure is received. **Attachment A** provides an overview of key PID requirements. More information is available at [ombudsman.gov.au](http://ombudsman.gov.au).

**Whistleblower disclosures to the Chair of the Audit Committee:** Whistleblower disclosures can also be made to the Chair of the Audit Committee. The Chair of the Board must be informed of all reported disclosures. The Chair of the Audit Committee can request that the General Manager, Finance, internal auditor or an independent party investigate the matter.

**Reporting to APRA, ASIC and auditors:** Reporting to APRA, ASIC or an auditor of CSC can be made where the whistleblower disclosure is made under the Corporations or the SIS Act. Whistleblower disclosures made under the SIS Act can also be made to an actuary of CSC.

**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 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.

**Attachment B** provides a Reporting and disclosure flow chart.

## Investigation

**Whistleblowers:** Whistleblowers must use their best endeavours to assist in the conduct of an investigation<sup>9</sup>.

**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 matter<sup>10</sup>. 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.

**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, counselling 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.

More information on the PID Act is outlined in Attachment A.

**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 made under the SIS Act he or she may refer the matter to APRA. A public official who has made a PID whistleblower disclosure can complain to the Commonwealth Ombudsman if they believe that CSC did not appropriately deal with it<sup>11</sup>.

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<sup>9</sup> PID Act s 61.

<sup>10</sup> Agency Guide to the *Public Interest Disclosure Act 2013* (Version 2, 2016), p. 46.

<sup>11</sup> *Ombudsman Act 1976* ss 5 & 5A.

## What protection and support is provided?

**Protections under the Corporations and SIS Act:** The Corporations and SIS Acts provide as follows:

- protection against civil or criminal liability for making the disclosure
  - no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the whistleblower on the basis of the disclosure (this may include the inability to terminate the whistleblowers employment contract),
- and
- victimisation of the whistleblower is prohibited.


**PID protections:** The PID Act provides for:

- protection of the discloser's identity
  - immunity from civil, criminal or administrative liability
  - support and protection from reprisal,
- and
- recourse to court for remedies for reprisal action.

**Staff will be provided with support and protection from reprisal and will not be victimised:**

This includes not having any disciplinary action brought against them, their employment terminated, intimidation, harassment or victimisation. 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 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 misleading<sup>12</sup>. **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 the information confidential

**Identity protection of a whistleblower and a person who is the subject of allegations or an investigation:** Directors, staff (including contractors) of CSC, auditors and actuaries 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 law<sup>13</sup>. 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.

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<sup>12</sup> The PID Act also specifies that liability will still occur where knowingly breaching a PID designated publication restriction without reasonable excuse.

<sup>13</sup> For example action to minimise the risk of reprisal against the discloser; Agency Guide to the *Public Interest Disclosure Act 2013* (Version 2, 2016), p. 51.

**Use of information under the Corporations and SIS Act:** Under the Corporations<sup>14</sup> and the SIS Acts<sup>15</sup> information about the disclosure, the identity of the whistleblower or information that is likely to lead to the identification of the whistleblower, whether directly or indirectly obtained, will be kept confidential. This information will be released where it is required to be released by law, or it is determined that the matter requires further investigation by a third party, such as ASIC, APRA, or the Australian Federal Police, or it is provided to someone else with the consent of the whistleblower.

**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 use<sup>16</sup>.

**Processes to assist in ensuring confidentiality:** To minimise the possibility of detrimental action against the discloser and others, including witnesses, CSC will ensure that:

- 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 area<sup>17</sup>.

## 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 discloser), considerations, findings, recommendations and any revisions,

and

- actions taken to address reprisal (or reprisal risk) and recommendations from a report of investigation.

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<sup>14</sup> Corporations Act s 1317AE.

<sup>15</sup> SIS Act s 336E(2).

<sup>16</sup> PID Act ss 65(1) & s 65(2).

<sup>17</sup> Agency Guide to the *Public Interest Disclosure Act 2013* (Version 2, 2016), p. 51.



## Review

This policy will be reviewed by the General Manager, Corporate biennially or following a trigger event, in particular in the light of any significant changes to CSC's business and regulatory changes, to assess its continuing currency. It, and any changes made to it from time to time, will be presented to the Board for approval.

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
25 July 2017	General Counsel team	Biennial review. Board Governance Committee meeting 15 June 2017; approval by Board 25 July 2017.

## Overview of key PID requirements

The CEO and General Managers are authorised officers to receive PID disclosures. The CEO is the principal officer.

When a PID whistleblower disclosure is initially received an authorised officer has certain requirements to fulfil within 14 days<sup>18</sup>. This includes advising the person making the disclosure of the process and available support<sup>19</sup>, seeking their consent to identify them to the principal officer<sup>20</sup>, and assessing the potential PID to establish whether the disclosed information reasonably tends to show disclosable conduct<sup>21</sup>.

If the disclosure is determined to be a PID, certain processes must be conducted within 14 days, including allocating the PID<sup>22</sup>, making appropriate notification<sup>23</sup> and conducting a reprisal risk assessment to determine suitable strategies for controlling risks and protecting and supporting staff. If the disclosure is determined not to be a PID certain processes must also be conducted within 14 days<sup>24</sup>.

Where a whistleblower disclosure is determined and allocated to be a PID under the Act, the CEO as the principal officer (or their delegate) must investigate the disclosure within 90 days<sup>25</sup>. They should consider how to investigate and whether there are grounds not to investigate, and make appropriate notification to the whistleblower<sup>26</sup>. When conducting the investigation certain processes must be followed. For example, in an interview the interviewee must be informed of the identity and function of each individual<sup>27</sup>.

To finalise an investigation the principal officer (or their delegate) must finalise a report of the investigation, make redactions if appropriate, provide a copy to the discloser, and take action in relation to any recommendations<sup>28</sup>.

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<sup>18</sup> If the authorised officer also receives a disclosure that they have reasonable grounds to believe could concern PID disclosable conduct, and the whistleblower may be unaware of the PID requirements, the authorised officer must meet certain conditions under the PID Act, including informing the whistleblower that the disclosure could be treated as an internal disclosure under the PID Act.

<sup>19</sup> This includes providing them with a copy of this policy; PID Standard s 7 & s 9.

<sup>20</sup> PID Act s 44(1)(d).

<sup>21</sup> PID Act s 26 (Item 1, Column 3) & s 29; or the whistleblower reasonably believes this to be the case.

<sup>22</sup> PID Act s 43(1).

<sup>23</sup> For example under s 44 of the PID Act; to the discloser, the principal officer and the Ombudsman.

<sup>24</sup> This includes making appropriate notification (PID Act s44) and records (PID Standard s 6).

<sup>25</sup> PID Act s47 & s52. If the discloser does not require investigation certain processes must also be conducted within 90 days; PID Act s 48(2), s 50 & s 50A.

<sup>26</sup> PID Act s53, s 54, s 50 & Part 3 PID Standard.

<sup>27</sup> PID Standard s 10.

<sup>28</sup> PID Act s 51, PID Standard s 13. The report must set out certain details under the PID Act and Standard. For example, the matters considered in the course of the investigation, findings (if any) and the action (if any) that has been, is being, or is recommended to be taken, and any claims made about, and any evidence of, detrimental action taken against the discloser, and the agency's response to those claims and that evidence.

## Reporting and disclosure flow chart

