



WHISTLEBLOWER POLICY

Australian Financial Markets Association

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Australian Financial Markets Association

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Contents

1. Policy	2
2. To whom the policy applies	2
3. Matters to which the policy applies	3
4. Personal work-related grievances not covered	4
5. Who can receive a disclosure	4
5.1. Eligible recipients	4
5.2. Disclosure to other persons permitted.....	4
5.3. Criteria for public interest disclosure.....	5
5.4. How to make a disclosure	5
5.5. Anonymous disclosures	5
6. Legal protections for disclosers	5
6.1. Qualification for discloser protection	5
6.2. Prohibited from causing detriment to discloser	6
6.3. Other legal protections	6
6.4. No immunity from own misconduct	7
6.5. Independent legal or regulatory advice if detriment	7
7. Support and practical protection for disclosers	7
7.1. Protecting identity	7
7.2. Records and information	7
7.3. Protection from detriment	7
8. Handling and investigating a disclosure	8
9. Ensuring fair treatment of individuals mentioned in a disclosure	8

1. Policy

The Australian Financial Markets Association (AFMA) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets and provides leadership in advancing the interests of all market participants. AFMA represents financial market participants, including Australian and international banks, leading brokers, securities companies, state government treasury corporations, fund managers, traders in electricity and other specialised markets and industry service providers.

AFMA promotes efficiency, integrity and professionalism in financial markets and provides support and services to members to this end. The reputation of AFMA as an organisation and the industry we represent is of paramount importance to us. AFMA places emphasis on its staff having high integrity, being professional and respected both by our members and the community as a whole.

Whistleblower protection laws are designed to assist financial sector regulators to identify and investigate wrongdoing that may not be uncovered unless there is a safe and secure means for disclosing wrongdoing. The law is generally written with large business entities engaging in complex commercial activities in mind. However, because AFMA is a public company the law applies without differentiation. Many of the scenarios envisaged of an entity breaching financial services laws are highly improbable in the context of a simple not-for-profit industry association like AFMA with a small professional secretariat. What AFMA seeks to foster is an environment where staff members feel safe raising and discussing internally concerns about matters where a law might be breached.

Additional information on whistleblower protection laws is available on the ASIC website: [INFO 238 Whistleblower rights and protections](#).

2. To whom the policy applies

A whistleblower for the purposes of this policy is an individual who is, or has been, any of the following in relation to AFMA:

- a) an officer or employee (e.g. current and former employees who are permanent, part-time, fixed-term or temporary, interns, secondees, managers, and directors);
- b) a supplier of services or goods to the entity (whether paid or unpaid), including their employees (e.g. current and former contractors, consultants, service providers and business partners);
- c) an associate of AFMA; and
- d) a relative, dependant or spouse of an individual in paragraph a) or b) such as relatives, dependants or spouse of current and former employees, contractors, consultants, service providers, and suppliers).

3. Matters to which the policy applies

Disclosable matters involve information that the discloser has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances, in relation to AFMA.

The term 'misconduct' includes 'fraud, negligence, default, breach of trust and breach of duty'.

The phrase 'improper state of affairs or circumstances' is general in nature. For example, 'misconduct or an improper state of affairs or circumstances' may not involve unlawful conduct in relation to the entity or a related body corporate of the entity but may indicate a systemic issue that the relevant regulator should know about to properly perform its functions. It may also relate to business behaviour and practices that may cause consumer harm.

The term 'reasonable grounds to suspect' is based on the objective reasonableness of the reasons for the discloser's suspicion. It ensures that a discloser's motive for making a disclosure, or their personal opinion of the person(s) involved, does not prevent them from qualifying for protection. In practice, a mere allegation with no supporting information is not likely to be considered as having 'reasonable grounds to suspect'. However, a discloser does not need to prove their allegations.

Disclosable matters also involve information about AFMA, if the discloser has reasonable grounds to suspect that the information indicates AFMA (including its employees or officers) have engaged in conduct that constitutes an offence against, or a contravention of, a statutory provision in a number of corporate and financial services laws, including the:

- a) *Corporations Act 2001*;
- b) *Australian Securities and Investments Commission Act 2001*;
- c) *Banking Act 1959*; and
- d) *Financial Sector (Collection of Data) Act 2001*;

A disclosable matter may also involve an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or represents a danger to the public or the financial system.

Examples of disclosable matters may relate to:

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- fraud, or misappropriation of funds;
- financial irregularities; and
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure.

Disclosable matters include conduct that may not involve a contravention of a particular law. It should be noted that information that indicates a significant risk to public safety or the

stability of, or confidence in, the financial system is also a disclosable matter, even if it does not involve a breach of a particular law.

This policy does not apply to business decisions taken by the management in the proper conduct of AFMA's affairs nor should it be used to reconsider any matters which have been dealt with in accordance with other management processes.

4. Personal work-related grievances not covered

Disclosures relating to personal work-related grievances do not qualify for protection under the Corporations Act. Examples of matters that are a 'personal work-related grievance' can be:

- a) an interpersonal conflict between the discloser and another employee;
- b) a decision that does not involve a breach of workplace laws;
- c) a decision about the engagement, transfer or promotion of the discloser;
- d) a decision about the terms and conditions of engagement of the discloser; or
- e) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

In respect to a grievance about personal treatment staff are referred to Item 6.1.3. in AFMA's Employee and Contractor Manual.

5. Who can receive a disclosure

5.1. Eligible recipients

For AFMA an eligible recipient includes:

- a) In the first instance the General Counsel of AFMA; or
- b) If the disclosable matter involves the General Counsel, the Chief Executive Office or the Company Secretary of AFMA; or
- c) The internal or external auditor (including a member of an audit team conducting an audit) or actuary of AFMA.

5.2. Disclosure to other persons permitted

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

Disclosures of information relating to disclosable matters can be made to ASIC, APRA or another Commonwealth body prescribed by regulation and qualify for protection under the Corporations Act.

5.3. Criteria for public interest disclosure

Disclosures can be made to a journalist or parliamentarian under certain circumstances and qualify for protection. 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 that:
 - i) includes sufficient information to identify the previous disclosure; and
 - ii) states that the discloser intends to make a public interest disclosure.

5.4. How to make a disclosure

Disclosures can be made may be made to an eligible recipient by direct contact in person or in written form such as by email.

5.5. Anonymous disclosures

Disclosures can be made anonymously and are still be protected under the Corporations Act.

6. Legal protections for disclosers

6.1. Qualification for discloser protection

A discloser qualifies for protection as a whistleblower under the Corporations Act if they are an eligible whistleblower in relation to the entity and:

- a) they have made a disclosure of information relating to a 'disclosable matter' directly to an 'eligible recipient' or to ASIC, APRA or another Commonwealth body prescribed by regulation;
- b) they have made a disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the Corporations Act; or
- c) they have made an 'emergency disclosure' or 'public interest disclosure'.

A discloser can still qualify for protection even if their disclosure turns out to be incorrect.

6.2. Prohibited from causing detriment to discloser

A person cannot engage in conduct that causes detriment to a discloser (or another person), in relation to a disclosure, if:

- a) the person believes or suspects that the discloser (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection; and
- b) the belief or suspicion is the reason, or part of the reason, for the conduct.

A person cannot make a threat to cause detriment to a discloser (or another person) in relation to a disclosure. A threat may be express or implied, or conditional or unconditional. A discloser (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.

Examples of detrimental conduct that are prohibited under the law, without deterring employees from making disclosures.

- Dismissal of an employee.
- Injury of an employee in his or her employment.
- Alteration of an employee's position or duties to his or her disadvantage.
- Discrimination between an employee and other employees of the same employer.
- Harassment or intimidation of a person.
- Harm or injury to a person, including psychological harm.
- Damage to a person's property.
- Damage to a person's reputation.
- Damage to a person's business or financial position.
- Any other damage to a person.

Examples of actions that are not detrimental conduct.

- Administrative action that is reasonable for the purpose of protecting a discloser from detriment (e.g. moving a discloser who has made a disclosure about their immediate work area to another office to prevent detriment to them).
- Managing a discloser's unsatisfactory work performance, if the action is in line with the entity's performance management framework.

6.3. Other legal protections

A discloser is protected from any of the following in relation to their disclosure:

- a) civil liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
- b) criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure)); and
- c) administrative liability (e.g. disciplinary action for making the disclosure).

6.4. No immunity from own misconduct

The law does not grant a discloser immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

6.5. Independent legal or regulatory advice if detriment

A discloser may seek independent legal advice or contact regulatory bodies, such as ASIC, APRA or the ATO, if they believe they have suffered detriment.

7. Support and practical protection for disclosers

Without consent of the discloser, a person cannot disclose the identity of a discloser or information that is likely to lead to the identification of the discloser (which they have obtained directly or indirectly because the discloser made a disclosure that qualifies for protection).

7.1. Protecting identity

To protect the discloser:

- all personal information or reference to the discloser witnessing an event will be redacted;
- the discloser will be referred to in a gender-neutral context; and
- where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them.

7.2. Records and information

Secure record-keeping and information-sharing processes -

- All paper and electronic documents and other materials relating to disclosures will be stored securely.
- Access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure;
- Only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser;
- Communications and documents relating to the investigation of a disclosure will not be sent to an email address or to a printer that can be accessed by other staff; and
- Each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

7.3. Protection from detriment

AFMA will assist protecting disclosers from detrimental acts or omissions through -

- Processes for assessing the risk of detriment against a discloser and other persons, which will commence as soon as possible after receiving a disclosure.
- Addressing the identified detriment risks.
- Strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation.

8. Handling and investigating a disclosure

AFMA will assess each disclosure to determine whether:

- a) it qualifies for protection; and
- b) a formal, in-depth investigation is required.

If in-depth investigation is required AFMA will investigate a disclosure, to determine:

- a) the nature and scope of the investigation;
- b) the person(s) within and/or outside the entity that should lead the investigation;
- c) the nature of any technical, financial or legal advice that may be required to support the investigation; and
- d) the timeframe for the investigation.

A discloser will be provided with regular updates, if the discloser can be contacted (including through anonymous channels). The frequency and timeframe may vary depending on the nature of the disclosure. The updates to a discloser will be given at stages of the investigation:

- when the investigation process has begun;
- while the investigation is in progress; and
- after the investigation has been finalised.

9. Ensuring fair treatment of individuals mentioned in a disclosure

Persons mentioned in a disclosure will be afforded fair treatment. This is done by observing the following points.

- Handling disclosures confidentially, when it is practical and appropriate in the circumstances.
- Each disclosure will be assessed and may be the subject of an investigation.
- The objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported.
- When an investigation needs to be undertaken, the process will be objective, fair and independent.
- 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 and prior to any actions being taken—for example, if the disclosure will be the subject of an investigation.
