



# **Whistleblower Policy**

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## **Glossary**

APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CRO	Chief Risk Officer
G&PR	Governance and Policy Review Committee
SWSCU	South West Slopes Credit Union Limited
WCO	Whistleblower Complaints Officer

## Definitions

**Disclosable matters** – include:

- Information that an eligible whistleblower has reasonable grounds to suspect misconduct or an improper state of affairs or circumstances in relation to SWSCU or a related body corporate;
- information indicating SWSCU or a related body corporate (including the related body's employees or officers) have engaged in conduct that:
  - (a) constitutes an offence against, or a contravention of, a provision of any of the following:
    - (i) the Corporations Act
    - (ii) the Australian Securities and Investments Commission Act 2001 (Cth)
    - (iii) the Banking Act 1959 (Cth)
    - (iv) the Financial Sector (Collection of Data) Act 2001 (Cth)
    - (v) the Insurance Act 1973 (Cth)
    - (vi) the Life Insurance Act 1995 (Cth)
    - (vii) the National Consumer Credit Protection Act 2009
    - (viii) the Superannuation Industry (Supervision) Act 1993 (Cth); or
  - (b) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
  - (c) otherwise represents a danger to the public or the financial system;
  - (d) is prescribed by regulation/legislation;
- information that a responsible person does not meet the fit and proper criteria as defined in CPS 520; and
- information that SWSCU has not complied with the requirements of CPS 520 to provide information to APRA about a responsible person not meeting the fit and proper person criteria.

**Discloser** – an individual who discloses wrongdoing or an eligible whistleblower.

**Disclosure** – a disclosure of information relating to wrongdoing or a disclosable matter.

**Eligible Recipient** – an individual within or external to SWSCU who can provide advice on or receive a disclosure including:

- an officer or senior manager of SWSCU;
- the internal or external auditor (including a member of an audit team conducting an audit) of SWSCU or related body corporate;
- a person authorised by SWSCU to receive disclosures that may qualify for protection, including the Whistleblower Complaints Officer (WCO), currently the CEO; and
- an eligible recipient for the purposes of section 14ZZV of the Taxation Administration Act.

**Eligible Whistleblower** – an individual to whom whistleblower protections apply including:

- an officer of SWSCU;
- an employee of SWSCU (for clarity this includes both current and former employees);
- any person who has information that a responsible person does not meet the fit and proper criteria under CPS 520;
- any person who has information that SWSCU has not complied with CPS 520 to provide information to APRA about a responsible person not meeting the fit and proper criteria;
- paid or unpaid suppliers of services or goods to SWSCU (and the employees of these suppliers);
- an associate of SWSCU;
- a relative, dependant or spouse of any of the above who makes a disclosure defined in Clause 2.1; and
- an eligible whistleblower for the purposes of section 14ZZU of the Taxation Administration Act.

**Emergency disclosure** - as defined in section 1317AAD (2) of the Corporations Act.

**Misconduct or an improper state of affairs** – includes but is not limited to fraud, negligence, a breach of trust, a breach of duty or any conduct that is dishonest or unethical, may cause harm or is prohibited by SWSCU’s standards or code(s) of conduct or as defined in section 14ZZT of the Taxation Administration Act.

**Personal information** – information or an opinion about an identified individual or an individual who is reasonably identifiable.

**Personal work-related grievance** – relates to the disclosers current or former employment which has or tends to have implications for the discloser personally, but do not:

- Have any other significant implications for the entity; or
- Relate to conduct or allege conduct about a discloseable matter.

**Public interest disclosure** - as defined in section 1317AAD (1) of the Corporations Act.

**Whistleblowing** – is defined as:

- a disclosure by an eligible whistleblower to an eligible recipient of a disclosable matter in relation to SWSCU or a related body corporate; or
- a disclosure of information that a responsible person does not meet the APRA-regulated institution’s fit and proper criteria as set out in APRA’s CPS 520; and
- a disclosure of information that SWSCU has not complied with CPS 520 to provide that information to APRA.

## 1. Regulatory Context

This Policy has been prepared in compliance with:

- (a) The Corporations Act 2001(Cth)
- (b) APRA Prudential Standard CPS520 Fit and Proper ('CPS 520')
- (c) Part IVD of the Taxation Administration Act 1953 (Cth) ('Taxation Administration Act'); and
- (d) Australian Securities and Investments Commission (ASIC)Regulatory Guide 270: Whistleblower policies

## 2. Purpose of this Policy

The Board of Directors (the "**Board**") of SWSCU are committed to best practice in risk management, corporate governance, compliance and ethical behaviour generally. As a matter of best practice, the purpose of this Policy is to:

- (a) ensure individuals who disclose misconduct or an improper state of affairs, offences against the law or information that indicates a significant risk to public safety or to the stability of the financial system, at SWSCU, can do so safely, securely and with confidence that they will be protected and supported;
- (b) ensure disclosures are dealt with by SWSCU appropriately and on a timely basis;
- (c) provide transparency around SWSCU's framework for receiving, handling and investigating disclosures;
- (d) encourage disclosures; and
- (e) deter wrongdoing generally.

## 3. Application of this Policy

This Policy applies to a Discloser that qualifies for protection as an Eligible Whistleblower.

An Eligible Whistleblower qualifies for protection from the time they make their disclosure, regardless of whether the discloser or recipient recognises that the disclosure qualifies for protection. An Eligible Whistleblower may still qualify for protection even if their disclosure turns out to be incorrect.

## 4. What Disclosures are protected?

Disclosures that qualify for protection under this Policy are:

- (a) A disclosure of information relating to a Disclosable Matter made directly to an Eligible Recipient or to ASIC, APRA or another Commonwealth body prescribed by regulation;
- (b) A disclosure to a legal practitioner for the purpose of obtaining legal advice or legal representation about the operation of the Whistleblower provision in the Corporations Act;
- (c) An Emergency Disclosure or a Public Interest Disclosure; or
- (d) Making a disclosure to the Commissioner of Taxation as provided for in section 14ZZT of the Taxation Administration Act.

For the purposes of this Policy a Disclosable Matter includes but is not limited to:

- (a) Illegal conduct, such as theft or other criminal activity;

- (b) Fraud, money laundering or misappropriation of funds;
- (c) Failure to comply with or breach of legal or regulatory requirements; and
- (d) Engaging or threatening to engage in detrimental conduct against a person who has made a disclosure or is believe or suspected to have made a disclosure.

**Disclosures that are not about Disclosable Matters do not qualify for protection under the Corporations Act or the Taxation Administration Act where relevant.**

#### **4.1 Personal work-related grievances**

Disclosures that relate solely to personal work-related grievances or malicious or vexatious complaints do not qualify for protection under this policy.

A personal work-related grievance includes an interpersonal conflict between the discloser and another employee, a decision that does not involve a breach of workplace laws, a decision about the engagement, transfer or promotion of the discloser, a decision about the terms and conditions of engagement of the discloser, a decision to discipline the discloser or a decision to suspend or terminate the engagement of the discloser.

A personal work-related grievance may still qualify for protection if it:

- (a) it includes information about misconduct;
- (b) the entity has breached employment or other laws punishable by imprisonment for a period of 12 months or more;
- (c) the entity has engaged in conduct that represents a danger to the public;
- (d) the Discloser suffers from or is threatened with detriment for making a Disclosure; or
- (e) the Discloser seeks legal advice or legal representation about the operation of the Whistleblower protections

Unsubstantiated allegations that are proven to have been maliciously, or are proven to be knowingly false, will be viewed seriously with disciplinary actions taken by SWSCU where appropriate.

#### **4.2 Industrial Relations Issues**

Employee and industrial relations related issues and human resources related issues are excluded from the operation of this Policy because there are other established mechanisms to raise such complaints.

### **5. How to make a disclosure under this Policy**

#### **5.1 Internal Disclosures**

SWSCU encourages SWSCU staff and disclosers to make disclosures directly to an internal or external Eligible Recipient of SWSCU in the first instance. This is to enable SWSCU to address what has been disclosed as early as possible. This approach is intended to help build confidence and trust in SWSCU's whistleblower policy, processes and procedures.

SWSCU staff have a duty to report known, suspected or potential cases of improper conduct. Failure to do so could result in disciplinary action.

SWSCU staff may have a legal obligation to report certain offences or other matter to regulatory authorities. Making a report in accordance with this Policy may not relieve a

discloser of such legal obligations. SWSCU staff should discuss with the WCO or obtain independent legal advice about external reporting obligations.

## **5.2 External Disclosures**

### **5.2.1 Disclosures to Regulatory Bodies**

Disclosures of information relating to disclosable matters can be made directly to regulatory bodies and qualify for protection under this Policy. Such disclosures can be made to one or more of the following:

- the Australian Securities and Investments Commission

For further information see: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/how-asic-handles-whistleblower-reports/>

- the Australian Prudential Regulatory Authority;

For further information see: <https://www.apra.gov.au/become-a-whistleblower-and-make-a-public-interest-disclosure>

- the Commissioner of Taxation;

For further information see: <https://www.ato.gov.au/general/gen/whistleblowers/> any other Commonwealth body prescribed by regulation.

### **5.2.2 Public Interest Disclosures and Emergency Disclosures**

A discloser can make a public interest disclosure or an emergency disclosure as defined in the Corporations Act to a journalist or parliamentarian under certain circumstances and qualify for protection. Advice on these types of disclosures and how to make them can be obtained from the WCO or a legal practitioner.

### **5.2.3 Disclosure to a Legal Practitioner**

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 and the Taxation Administration Act are protected under this Policy.

## **6. Legal Protections for Disclosers under this Policy**

### **6.1 Identity Protection (Confidentiality)**

When information is disclosed by a discloser in accordance with this Policy, it is illegal for the person receiving the information to tell anyone other than the Australian Securities and Investments Commission (ASIC), Australian Prudential Regulatory Authority (APRA), the Australian Federal Police or the Commissioner of Taxation any of:

- the information disclosed;
- the identity of the person making the disclosure; or
- any information which will enable the identification of the person making the disclosure

Unless the discloser consents to the disclosure.

Exceptions to this prohibition are contained in clause 4.3.

The WCO will provide assurance to a discloser that SWSCU is committed to protecting the confidentiality of their identity.



The WCO will explain the procedures SWSCU has in place for ensuring confidentiality and privacy.

#### **6.1.1 Exceptions to prohibition on disclosure of identity or information**

The identity of the discloser may be disclosed without that person's consent where the disclosure is made:

- (a) by ASIC, APRA or the Australian Federal Police to a Commonwealth, state or territory authority to help the authority in the performance of its functions or duties;
- (b) to a legal practitioner for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the Corporations Act and/or the Taxation Administration Act; or
- (c) to a person or body prescribed by Commonwealth regulations.

The information contained in the discloser's disclosure may be disclosed without that person's consent if:

- (a) the information does not include the discloser's identity;
- (b) SWSCU has taken all reasonable steps to reduce the risk that the discloser will be identified from the information; and
- (c) It is reasonably necessary in the view of the person conducting the investigation for investigating the issues raised in the disclosure.

#### **6.1.2 Protection of Privacy**

To the extent that any of the information recorded by the WCO on SWSCU's behalf constitutes "personal information" about the Whistleblower under applicable Privacy legislation, the following applies: that:

- the purpose of the collection of that information is to assist the WCO and SWSCU to respond to issues raised by the Whistleblower and to protect or enforce SWSCU's legal rights or interests or to defend any claims;
- personal information may be used for the primary purpose for which it was collected or for any related secondary purpose that could reasonably be expected; and
- personal information may be disclosed as described under this section.

SWSCU's policy is not to collect "sensitive information" unless the person to whom the information relates consents to the collection and the information is reasonably necessary for one or more of SWSCU's functions or activities for the implementation of this Policy, or the collection is authorised or required by law.

"Sensitive information" means information or an opinion about a person's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, memberships of a profession or trade, membership of a trade union, sexual orientation or practices, criminal record or health, genetic information, biometric information and templates.

## 6.2 Protection from detrimental acts or omissions

SWSCU's officers, employees, contractors and their relatives, dependants or spouses, must not 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.

Examples of detrimental conduct include:

- dismissal of the discloser;
- injury of the discloser in his or her employment;
- alteration of a discloser'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 discloser
- harm or injury to a discloser of the discloser, including psychological harm;
- damage to a person's property;
- damage to a person's reputation;
- damage to a person's business or financial position;
- or any other damage or detriment to a person including a relative, spouse or dependent of the discloser.

Detrimental conduct **does not** include:

- administrative action that is reasonable to protect an ADI's person from detriment (e.g. when the disclosure relates to wrongdoing in the discloser's immediate work area); or
- managing a disclosers unsatisfactory work performance in accordance with SWSCU's performance management framework.

SWSCU's officers, employees, contractors and their relatives, dependants or spouses, must not 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.

SWSCU will regard any detrimental conduct or a threat to cause detriment to a Discloser (or another person) very seriously and take appropriate action, which may include, in the case of employees, disciplinary action and dismissal.

Similarly, all reasonable steps must be taken to ensure that no person is subject to, or threatened with, a detriment because of any notification in purported compliance with the requirements of the Taxation Administration Act and APRA CPS 520 (see our Fit and Proper Policy).

The WCO will:

- (a) provide assurance to a discloser that SWSCU is committed to protecting the welfare of the discloser; and
- (b) explain SWSCU's processes for assessing the risk of detriment against a discloser and other persons after receiving a disclosure; and
- (c) suggest counselling (or other professional or legal services) that are available to a discloser;
- (d) strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation; and
- (e) advise the specific actions SWSCU will take to protect a discloser from risk of detriment (or if the detriment has already occurred what specific actions SWSCU will take to protect and support the discloser); and
- (f) explain how SWSCU will ensure that management are aware of their responsibilities under this Policy including but not limited to:
  - maintain the confidentiality of a disclosure;
  - address the risks of isolation or harassment;
  - manage conflicts; and
  - ensure fairness when managing the performance of, or taking other management action relating to, a discloser;
- (g) explain to the discloser how they can lodge a complaint if they have suffered detriment and what actions SWSCU will take in response to the complaint; and
- (h) explain how the discloser can seek independent legal advice or contact the relevant regulatory bodies in the event they believe they have suffered detriment.

### **6.3 Compensation and other remedies**

Nothing in this Policy prevents a discloser from seeking compensation and other remedies, including where appropriate remedies set out in section 14ZZZA of the Taxation Administration Act, through the courts if:

- he or she suffers loss, damage or injury because of a disclosure; and
- the entity failed to prevent a person from causing the loss, damage or injury.

Nothing in this policy prevents a discloser lodging a complaint with a regulatory body if they are not satisfied with the outcome of SWSCU's investigation.

SWSCU encourages SWSCU staff and disclosers to seek independent advice regarding compensation and remedies at law.

### **6.4 Civil, criminal and administrative liability protection**

Disclosers are protected under section 1317AB (1) of the Corporations Act from any of the following in relation to their disclosure:

- civil liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);

- criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the person in a prosecution (other than for making a false disclosure); and
- administrative liability (e.g. disciplinary action for making the disclosure).

Nothing in this policy grants immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

## **7. Investigating a Disclosure**

### **7.1 Who investigates a disclosure?**

Where a Disclosure is received by the WCO, the WCO will ask the CRO to investigate.

In certain circumstances (for example where the disclosure involves allegations of fraud) the WCO may inform the Board and recommend the appointment of external investigators.

In the event that the disclosure relates to SWSCU's CEO, WCO, or a director, such a disclosure will be directed immediately to the Chair of the Board.

In the event that the disclosure relates to the Chair of SWSCU's Board, such disclosure will be directed immediately to the Deputy Chair.

Where a disclosure relates to a significant matter involving the CEO, the CFO or a senior manager that reports directly to either of them, the WCO will refer the disclosure directly to the chair of the Board.

### **7.2 How is an investigation carried out?**

The person appointed to investigate the disclosure will be required to follow SWSCU's usual procedures for handling a complaint or disciplinary issue. This would generally involve:

- (a) appointing a person within SWSCU who will be responsible for handling and investigating the disclosure;
- (b) undertaking a fair, independent and discreet investigation into the substance of the report to determine whether:
  - it falls within this Whistleblower Policy; and
  - a formal, in-depth investigation is required;
- (c) there is evidence to support the disclosure;
- (d) the time-frame for the investigation being set;
- (e) respecting individual confidentiality
- (f) determining the nature of any technical, financial or legal advice that may be required to support the investigation;
- (g) collecting all available data and investigating the disclosure;
- (h) interviewing any relevant person in order to observe the rules of procedural fairness;
- (i) proceeding with due care and appropriate speed; and
- (j) consulting or informing employee representative bodies of the substance of the disclosure, as required.

### **7.2.1 Where the identity of the discloser is known**

Where the Whistleblower has identified himself or herself, the investigator would usually begin the investigation by interviewing that person. However, this person's identity would not be made known to any other person without the whistleblower's specific consent.

### **7.2.2 Where the identity of the discloser is not known**

Disclosures can be made anonymously and still qualify for protection under this Policy. A discloser can choose to remain anonymous while making a disclosure, during the investigation and after the investigation however SWSCU may not be able to undertake an investigation if a disclosure is made anonymously and the discloser has refused or omitted to provide a means of contacting them.

### **7.2.3 Where the identity of the discloser cannot be disclosed by the investigator or any other person**

Without the discloser's consent, SWSCU will not disclose information that is contained in a disclosure as part of its investigation process, unless:

- (a) the information does not include the discloser's identity;
- (b) SWSCU removes information relating to the discloser's identity or other information that is likely to lead to the identification of that person (e.g. name, position title and other identifying details); and
- (c) it is reasonably necessary for investigating the disclosure.

If a discloser makes a disclosure that qualifies for protection under Part IVD of the Taxation Administration Act, a person involved in the investigation is not required to:

- (a) disclose to a court or tribunal:
  - i. the identity of the discloser; or
  - ii. information that is likely to lead to the identification of the discloser; and
- (b) produce to a court or tribunal a document containing:
  - i. the identity of the discloser; or
  - ii. information that is likely to lead to the identification of the discloser.

This is except where it is necessary to do so for the purposes of giving effect to Part IVD of the Taxation Administration Act or the court or tribunal thinks it necessary in the interests of justice to do so.

### **7.2.4 Keeping the Discloser informed during the investigation**

A disclosure will be acknowledged within a reasonable period after it is received, if the discloser can be contacted (including through anonymous channels).

SWSCU will provide the discloser with updates;

- when the investigation process has begun;
- while the investigation is in progress; and

- after the investigation has been finalised.

A discloser will receive an update in person from the WCO while an investigation is ongoing, at least **every three months**.

### **7.3 Outcomes of investigations**

#### **7.3.1 What happens after an investigation?**

At the end of the investigation, the investigator will report his or her findings to the WCO as the investigator deems appropriate, to determine the appropriate response. This response will include rectifying any improper conduct and taking any action required to prevent any future occurrences of the same or similar conduct. The WCO will seek the Board's approval for all actions required following the investigation of complaints.

In the event that the investigation related to SWSCU's CEO, WCO, or a director, the investigator will report his or her findings direct to the chair of the Board.

Where issues of discipline arise, the response will also be in line with SWSCU's procedures for disciplinary matters.

Where allegations of improper conduct made against another person cannot be substantiated, that person will be advised accordingly and will be entitled to continue in his or her role as if the allegations had not been made.

#### **7.3.2 What if the Whistleblower is involved?**

A person who has committed or been involved in improper conduct will not be immune from disciplinary action merely because they have reported the improper conduct in accordance with this Policy.

However, the disclosers conduct in making the report is likely to be considered in determining what disciplinary action is appropriate.

In some limited circumstances, a full and frank admission may be a mitigating consideration in respect of disciplinary or other action.

#### **7.3.3 Review**

If a discloser is not satisfied with the outcome of an investigation, a review may be conducted by an officer of SWSCU who is not involved in handling and investigating disclosures.

The review findings will be provided to the board.

SWSCU is not obliged to reopen an investigation and may conclude a review if it finds that the investigation was conducted properly, or new information is either not available or would not change the findings of the investigation.

#### **7.3.4 Record keeping**

The findings from an investigation will be documented by SWSCU and such documentation will be retained by SWSCU for five (5) years.

### **7.3.5 Reports**

The WCO will provide periodic reports containing a general summary of the number and type of cases made to the WCO together with a description of the nature and results of any investigation conducted as a result of a report.

In the compilation of these reports the identity of any person who has made a report under this Policy in good faith or any information, which may enable that person to be identified will not be disclosed.

These reports will be provided to the:

- CEO or his or her delegate and the Chief Risk Officer on a regular basis (the frequency to be determined by the CEO from time to time); and
- Board Risk Committee every quarter.

A consolidated report will also be provided to the Board Risk Committee each year.

## **8. Awareness and Training**

This Policy will be made available to SWSCU's officers and employees via the following:

- staff briefing sessions and/or smaller team meetings;
- staff intranet or other communication platform;
- staff noticeboards;
- the employee handbook;
- employee induction information packs; and
- training for new starters.

This policy will be made available for potential disclosers outside SWSCU on SWSCU's website.

## **9. Policy Review**

SWSCU is committed to monitoring the effectiveness of this Policy. A review of the Policy will be conducted every two years and any issues identified in the review will be rectified in a timely manner. Some issues that will be considered during the review are whether:

- the scope and application of the policy are appropriate,
- the policy, processes and procedures are helpful and easy to understand;
- the policy, processes and procedures reflect current legislation and regulations, and current developments and best practice for managing disclosures; and
- SWSCU's handling of disclosures and its protections and support for disclosers need to be improved.

## Table of Amendments

<b>Version</b>	<b>Description</b>	<b>Approved By</b>
1.0	New Whistleblower policy.	G&PR: 17/12/2019 Board: 27/12/2019
1.1	Reviewed with minor amendments	G&PR: 14/12/2021 Board: 22/12/2021
2.0	Complete rewrite of policy to reflect ASIC Regulatory Guide 270	G&PR: 5/12/2023 Board: 20/12/2023