



NSWJBD WHISTLEBLOWER POLICY

1. Introduction to this Policy

1.1 Purpose and scope

This Policy applies to the New south Wales Jewish Board of Deputies Limited (**NSWJBD**) and is an important tool for helping the NSWJBD to identify certain wrongdoing that may not be discovered unless there is a safe and secure means for disclosing such wrongdoing.

2. To whom this Policy applies

2.1 Eligible whistleblowers

A discloser who qualifies as an **eligible whistleblower** (referred to in this Policy variously as a **'discloser'** or **'eligible discloser'** or **'eligible whistleblower'**), is an individual who is, or has been, any of the following, in relation to the NSWJBD:

- a Director including a Chair of a Committee established by the Plenum (**Committee**), an Associate, or a Deputy of the NSWJBD;
- a member of a Committee;
- a Councillor from NSW to the ECAJ;
- an employee;
- a person who supplies goods or services (whether for payment or as a volunteer);
- an employee of a person who supplies goods or services (whether for payment or as a volunteer);
- an individual who is an associate of the NSWJBD (as defined in the *Corporations Act*); and
- a relative, dependent or spouse (or dependents of a spouse), of any individual described above.

3. Matters this Policy applies to

3.1 Qualifying disclosures

In order to be protected by this Policy, a disclosure must be a **qualifying disclosure**, that is where an **eligible whistleblower** makes:

- a disclosure directly to an **eligible recipient**, or to ASIC, APRA or other Commonwealth body prescribed by regulation;
- 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*;
- an 'emergency disclosure' or 'public interest disclosure' (see ss1317AAD(1) and (2) of the *Corporations Act*), preferably after obtaining independent legal advice;

and 'the eligible whistleblower has **reasonable grounds to suspect** that the information concerns a **disclosable matter**.

A disclosure which is not a qualifying disclosure, is not protected under the *Corporations Act*, the *Tax Administration Act* or by this Policy, but may be protected under other legislation such as the *Fair Work Act 2009*.

3.2 Disclosable matters that qualify for Protection under this Policy

A disclosable matter is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that the information relating to the NSWJBD concerns:

- misconduct;
- an improper state of affairs or circumstances;
- illegal activity (including conduct of officers and employees) – meaning activity in breach of the *Corporations Act* or specified financial services legislation, or an offence against any law of the Commonwealth punishable by imprisonment of 12 months or more; or
- conduct (including conduct of officers and employees) that represents a danger to the public or financial systems or is prescribed by legislation.

A disclosable matter may include any conduct in relation to the operation of the NSWJBD that involves:

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- fraud, unlawful or corrupt use of funds;
- offering or accepting a bribe;
- improper accounting or financial irregularities;
- failure to comply with, or breach of, legal or regulatory requirements; 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.

A disclosable matter can include conduct that may not involve a contravention of a particular law.

3.3 Personal work-related grievances generally do not qualify for Protection under this Policy

Generally, disclosures that concern personal work-related grievances will **not** qualify for protection.

A disclosure will concern a personal work-related grievance of the discloser, if the information:

- concerns a grievance about any matter in relation to the discloser's employment, or former employment, having or tending to have implications for the discloser personally; and
- does not have significant implications for the NSWJBD that do not relate the discloser; and
- does not concern conduct that is:
 - an alleged contravention of the *Corporations Act* and specified financial services laws; or
 - an offence against another law of the Commonwealth, which is punishable by imprisonment of 12 months or more; or
 - a danger to the public or financial system; or

Personal work-related grievances will be addressed in accordance with the Complaints and Grievance Section of the NSWJBD's Staff Manual.

A disclosure **may** qualify for protection if it concerns a personal work-related grievance and also concerns alleged detriment (or a threat of detriment) to the discloser or if:

- the NSWJBD has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstances;
- the discloser suffers from or is threatened with detriment for making a disclosure; or
- the discloser seeks legal advice or legal representation about the operation of the whistleblower protections under the *Corporations Act*.

3.4 Reasonable grounds to suspect

A discloser has 'reasonable grounds to suspect that the information concerns a disclosable matter', if the discloser has a suspicion that could reasonably be formed based on the facts and information available to them. A discloser can still qualify for protection even if their disclosure turns out to be incorrect.

If a disclosure is made without 'reasonable grounds to suspect' (e.g. where the disclosure is unfounded), the disclosure will not be a qualifying disclosure and the discloser will not have the protections provided for under this Policy, the *Corporations Act* and the *Tax Administration Act*.

This Policy limits protection for disclosures about solely personal employment related matters, while preserving protection for disclosures about systematic issues or reprisals against a whistleblower.

4. Who can receive a qualifying disclosure

4.1 Eligible recipients

The role of an 'eligible recipient' is to receive disclosures that qualify for protection under this Policy. In order for the disclosure to be protected under this Policy it must be made by a discloser directly to an 'eligible recipient.'

An 'eligible recipient' is an individual who occupies any of the following roles, in relation to the NSWJBD:

- the President;
- the Vice Presidents;
- the Chief Executive Officer;
- the Hon Secretary;
- a Director including a Committee Chair, or an Honorary Life Deputy of the NSWJBD;
- a legal practitioner for the purpose of obtaining legal advice or legal representation (even in the event that the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter'); and
- an auditor, or member of an audit team of the NSWJBD.

As noted in section 3.1 above, a discloser can make a disclosure directly to regulatory bodies.

5. How to make a qualifying disclosure

5.1 Making a qualifying disclosure

While an eligible whistleblower can make a disclosure to any eligible recipient, the NSWJBD encourages them to make a disclosure directly to the President of the NSWJBD in writing - by post, hand delivery, or via email at president@nswjbd.org.au

If it is not appropriate for the disclosure to be made to the **NSWJBD President**, the eligible whistleblower is encouraged to make the disclosure, directly to one of the **Vice Presidents of the NSWJBD** in writing - by post, hand delivery, or via email at vp@nswjbd.org.au

Where a disclosure is made to an eligible recipient who is not the President, then subject to the confidentiality protections set out at Section 6 below, it will generally be passed onto the President and dealt with in accordance with Section 7 below.

5.2 Anonymous disclosures

A disclosure can be made anonymously and still be protected under this Policy.

However, an anonymous disclosure may be difficult for the NSWJBD investigate. The NSWJBD encourages disclosers to provide their names. A discloser can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations. If a discloser wishes to disclose anonymously, the discloser should provide sufficient information to allow the matter to be properly investigated and the NSWJBD encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided.

6. Confidentiality and records

Under the *Corporations Act*, the identity of the discloser of a qualifying disclosure and information which is likely to lead to the identification of the discloser, must be kept confidential.

Exceptions to the requirement of confidentiality, are:

- disclosures to ASIC, the Australian Federal Police, a legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections including this Policy, or made with the consent of the discloser.
- The discloser's identity and information which is likely to lead to the identification of the discloser can also be provided to any Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions or duties. This could include NSW Police, the NSW Ombudsman, NSW Education Standards Authority or the NSW Department of Education.
- It is also permissible to disclose information which could lead to the identification of the discloser, if it is reasonably necessary for the purpose of investigating the matter, provided that all reasonable steps are taken to reduce the risk that the discloser will be identified as a result of the information being disclosed.

Breach of these confidentiality protections regarding the discloser's identity and information likely to lead to the identification of the discloser, is a criminal offence and may be the subject of criminal, civil and disciplinary proceedings.

Confidentiality must be observed in relation to handling and storing records.

7. Investigating a qualifying disclosure

7.1 Receiving a disclosure

Upon receiving a disclosure, the eligible recipient will assess the disclosure to determine whether it qualifies for protection under the *Corporations Act* and therefore is to be managed in accordance with this Policy (qualifying disclosure) or whether the disclosure concerns matters that should be managed in accordance with the NSWJBD's related policies set out in section 1.2 above.

7.2 Investigating a qualifying disclosure

The manner in which the NSWJBD investigates a qualifying disclosure, will depend on the nature of the disclosure.

An investigation will generally involve the making of inquiries or collection of evidence for the purpose of assessing the qualifying disclosure made by the whistleblower.

External professionals may be engaged to assist or conduct the investigation process.

The timing of an investigation will depend on the nature of the qualifying disclosure, the circumstances of the matter and whether the NSWJBD is the primary investigator of the disclosure.

Employees about whom qualifying disclosures are made, will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.

An eligible whistleblower and the relevant parties to whom the qualifying disclosure relates, may choose to have an appropriate support person present at any meeting with representatives of the NSWJBD.

The NSWJBD will handle the disclosure confidentially, objectively fairly and independently and will keep and maintain appropriate records and documentation.

8. Legal protections for Disclosers

8.1 Confidentiality protection

Eligible whistleblowers making a qualifying disclosure are protected by the requirement that their identity, and information that may lead to their identification, must be kept confidential, subject to relevant exceptions as set out in section 6 above.

8.2 Liability protection

Eligible whistleblowers making a qualifying disclosure cannot be subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. No contractual or other remedy or right may be enforced or exercised against the person on the basis of the qualifying disclosure.

Whistleblowers who make some types of qualifying disclosures (generally external to the NSWJBD) are also provided immunities to ensure that information they disclose is not admissible in evidence against them in certain proceedings.

In practice the NSWJBD will take one or more of the following steps to protect the confidentiality of an eligible 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;
- where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them; and
- disclosures will be handled and investigated by relevantly qualified personnel who may or may not be staff of the NSWJBD.

Further the NSWJBD will adopt appropriate and recognised procedures concerning record keeping.

8.3 Detrimental conduct protection

Eligible whistleblowers are also protected from victimisation - suffering any detriment by reason of the qualifying disclosure. It is unlawful for a person to engage in conduct against another person that causes, or will cause detriment, where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure.

Threats (whether express, implied, conditional or unconditional) to cause detriment to a discloser are also unlawful.

Detriment has a very broad meaning and includes: dismissal of an employee; injuring an employee in their employment; alteration of an employee's position or duties to their disadvantage; discrimination between an employee and other employees; harassment or intimidation of a person; harm or injury to a person, including psychological harassment; damage to a person's property, reputation or business or financial position; or any other damage to a person.

In practice the NSWJBD will protect disclosers from detriment by adopting appropriate and recognised measures.

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.

A discloser (or any other employee or person), can seek compensation and other remedies through the courts if:

- (a) they suffer loss, damage or injury because of a disclosure; and
- (b) the NSWJBD failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

The NSWJBD and individuals may face significant civil and criminal penalties for failing to comply with confidentiality and detrimental conduct provisions.

If an eligible whistleblower believes they are being subjected to a detriment or a threat of detriment, this should immediately be reported in writing to the NSWJBD President, via email at president@nswjbd.org.au

If it is not appropriate for the report to be made to the NSWJBD President, the eligible whistleblower should report the matter, in writing, to a Vice President of the Board, via email at vp@nswjbd.org.au or to another eligible recipient specified in section 4.1 above.

An eligible discloser is encouraged to seek independent legal advice.

9. Access to this policy

This Policy and any amendments to it, is published on the NSWJBD's website. In addition, NSWJBD staff will be provided with a written summary of key aspect of the Policy.

10. Contact

If you have any queries about this policy, you should contact the NSWJBD on (02) 9360 1600 or at mail@nswjbd.org.au