



# **Speak Up Whistleblower Protection Policy**

## 1 Purpose

- (a) Financial Services Council (**FSC**) recognises the value in developing and fostering a culture of corporate compliance, ethical decision-making and protecting **eligible whistleblowers** who **speak up** make **protected disclosures** from suffering **detriment**.
- (b) FSC will not tolerate anyone from being discouraged or experiencing **detriment** for **speaking up** or wanting to **speak up** in accordance with this policy.
- (c) The purpose of this policy is to:
  - (i) prevent and detect **disclosable matters**;
  - (ii) encourage **eligible whistleblowers** to **speak up**;
  - (iii) outline the process by which an **eligible whistleblower** can **speak up**, including how and to whom a **protected disclosure** should be made;
  - (iv) outline the process by which FSC will investigate **protected disclosures**;
  - (v) inform **eligible whistleblowers** who **speak up** about the protections from **detriment**; and
  - (vi) outline the process for fair treatment of persons to whom a **protected disclosure** relates or mentions.

## 2 Scope

- (a) This policy applies to all employees, officers, directors and volunteers of FSC.
- (b) This policy provides protections to **eligible whistleblowers** beyond its employees, officers, directors and volunteers, including these persons' spouses, dependants and relatives.
- (c) This policy will be made available to all employees, officers, directors and volunteers of FSC, and is also publicly available on FSC's website via <https://www.fsc.org.au/resources/fsc-speak-up-policy>.

## 3 Definitions

- (a) **Associate** means an individual who is an associate of FSC within the meaning of the *Corporations Act 2001* (Cth).
- (b) **Detriment** includes (but is not limited to):
  - (i) dismissal of an employee;
  - (ii) injury of an employee in their employment;
  - (iii) alteration of an employee's position or duties to their disadvantage;

- (iv) discrimination between an employee and other employees;
- (v) harassment or intimidation of a person;
- (vi) harm or injury to a person, including psychological harm;
- (vii) damage to a person's property;
- (viii) damage to a person's reputation;
- (ix) damage to a person's business or financial position; and
- (x) any other damage to a person,

but does not include administrative action that is reasonable for the purpose of protecting an **eligible whistleblower** from **detriment** such as moving a discloser to a different work area away from the subject of the disclosure, and will not include management of an **eligible whistleblower's** unsatisfactory work performance.

(c) **Disclosable matter:**

- (i) A disclosure of information by an **eligible whistleblower** where the **eligible whistleblower** has reasonable grounds to suspect that:
  - (A) the information concerns misconduct or an improper state of affairs or circumstances in relation to FSC or a related body corporate of FSC, including but not limited to:
    - (I) corruption or fraud;
    - (II) negligence;
    - (III) default;
    - (IV) conduct in breach of trust or confidence;
    - (V) conduct in breach of duty;
    - (VI) conduct that represents a conflict of interest or anti-competitive behaviour;
    - (VII) causing **detriment** to any person who has made, or is thought to have made, a **protected disclosure**; or
  - (B) the information indicates that FSC, a related body corporate of FSC, or an officer or employee of FSC or a related body corporate of FSC, has engaged in conduct that:
    - (I) contravenes any provisions of the *Corporations Act 2001*, *ASIC Act 2001*, *Banking Act 1959*, *Financial Sector (Collection of Data) Act 2001*, *Insurance Act 1973*, *Life Insurance Act 1995*, *National Consumer Credit Protection Act 2009*, *Superannuation Industry (Supervision) Act 1993* or an instrument or regulation made under any of those

- Acts; or
- (II) contravenes any other law of the Commonwealth that is punishable by imprisonment for 12 months or more; or
  - (III) represents a danger to the public or the financial system.
- (ii) A disclosure of information by an **eligible whistleblower** in relation to **tax affairs** made to an **eligible recipient** referred to in clause 3(g)(i), 3(g)(ii), 3(g)(iii), 3(g)(iv) or 3(g)(x), where the **eligible whistleblower** has reasonable grounds to suspect that:
- (A) the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the **tax affairs** of FSC or an associate; and
  - (B) considers that the information may assist the eligible recipient to perform functions or duties in relation to the **tax affairs** of FSC or an associate; or
- (iii) A disclosure of information in relation to **tax affairs** made to the Commissioner of Taxation, where the **eligible whistleblower** considers that the information may assist the Commissioner of Taxation to perform their functions or duties in relation to the **tax affairs** of FSC or an **associate**.
- (d) **Discloser governance officer:**
- (i) FSC General Counsel; or
  - (ii) FSC Chief Executive Officer (**CEO**).
- (e) **Discloser protection officer** is an officer, senior manager or employee of FSC appointed by a **discloser governance officer** or **external discloser governance officer** to ensure the **eligible whistleblower** who **speaks up** is provided with support and the protections set out under part 7 of this policy.
- (f) **Eligible whistleblower:**
- (i) an individual who is a current or former:
    - (A) officer of FSC;
    - (B) employee of FSC;
    - (C) individual (paid or unpaid) who supplies services or goods to FSC;
    - (D) employee of an individual (paid or unpaid) that supplies services or goods to FSC;
    - (E) an **associate** of FSC; or
  - (ii) a relative, dependant or spouse of an individual referred to in clause 3(f)(i).

- (g) **Eligible recipient:** a person or entity capable of receiving disclosures that qualify for protection including:
- (i) a senior manager or an officer of FSC or of a related body corporate of FSC which, for the avoidance of doubt, includes FSC's CEO, Financial Controller, Director of Member Services, General Counsel and Senior Legal Counsel. Up to date contact details for those individuals listed at the end of this policy];
  - (ii) a person authorised by FSC to receive **protected disclosures**, which includes any delegates or deputies of FSC's CEO FSC's and Wentworth Advantage Hotline referred to in clause 3(g)(viii);
  - (iii) an auditor, or a member of an audit team conducting an audit, of FSC or a related body corporate of FSC;
  - (iv) an actuary of FSC or of a related body corporate of FSC;
  - (v) ASIC;
  - (vi) APRA;
  - (vii) a Commonwealth authority;
  - (viii) Wentworth Advantage Hotline, an external, independently operated service authorised by FSC to accept contact by **eligible whistleblowers** on a confidential and anonymous basis;
  - (ix) where the **eligible whistleblower** is disclosing for the purpose of obtaining legal advice or legal representation in relation to the operation of relevant whistleblower legislation, a legal practitioner;
  - (x) where the disclosure is in relation to **tax affairs**:
    - (A) any employee or officer of FSC who has functions or duties that relate to the **tax affairs** of FSC;
    - (B) a registered tax agent or BAS agent who provides tax agent or BAS services to FSC; or
    - (C) where the **eligible whistleblower** considers that the information may assist the Commissioner of Taxation to perform their functions or duties in relation to FSC's **tax affairs**, the Commissioner of Taxation.
- (h) **Emergency disclosure:** a disclosure of a **disclosable matter** by an **eligible whistleblower** to a Member of Parliament or a journalist where:
- (i) the **eligible whistleblower** has already made a **protected disclosure** to ASIC, APRA or a Commonwealth authority; and
  - (ii) they have reasonable grounds to believe that the **protected disclosure** concerns a substantial and imminent danger to the health or safety of either:

- (A) one or more persons; or
- (B) to the natural environment; and
- (iii) they have notified the entity to which they made the **protected disclosure** that they intend to make an **emergency disclosure**; and
- (iv) the extent of the information disclosed in the **emergency disclosure** is no greater than necessary to inform the recipient of the substantial and imminent danger.
- (i) **External discloser governance officer:** the Managing Director from time to time of Wentworth Advantage.
- (j) **Personal work-related grievance:** a grievance about any matter in relation to the **eligible whistleblower's** current or former employment or engagement with FSC, which:
  - (i) has (or tends to have) implications for the **eligible whistleblower** personally;
  - (ii) does not have significant implications for FSC (or another organisation regulated by whistleblower protection laws) that are unrelated to the **eligible whistleblower** personally; and
  - (iii) does not relate to conduct (or alleged conduct) set out in clause 3(c)(i)(B).

For example, this includes (but is not limited to):

- interpersonal conflicts;
- decisions relating to the engagement, transfer or promotion of the **eligible whistleblower**;
- decisions relating to the terms and conditions of the **eligible whistleblower's** engagement;
- decisions to suspend, discipline or dismiss the **eligible whistleblower**;
- conduct (or alleged conduct) in respect of workplace bullying, harassment, sexual harassment or discrimination.

A **personal work-related grievance** is not a **disclosable matter** and does not qualify for protections under part 7 of this policy or the *Corporations Act 2001* (Cth), except to the extent that it concerns **detriment** to the **eligible whistleblower** in contravention of clause 7.3.

- (k) **Protected disclosure:** a disclosure by an **eligible whistleblower** to an **eligible recipient** of a **disclosable matter** qualifying for protection in accordance with this policy and at law.
- (l) **Public interest disclosure:** a disclosure of a **disclosable matter** by an **eligible whistleblower** to a Member of Parliament or a journalist where:

- (i) the **eligible whistleblower** has already made a **protected disclosure** to ASIC, APRA or a Commonwealth authority;
  - (ii) at least 90 days have passed since the **protected disclosure**;
  - (iii) they do not have reasonable grounds to believe that action has been or is being taken to address the matters to which the **protected disclosure** related;
  - (iv) they have reasonable grounds to believe that making the **public interest disclosure** would be in the public interest;
  - (v) after the period referred to in clause 3(l)(i), they have notified the entity to which they made the **protected disclosure** that they intend to make a **public interest disclosure**; and
  - (vi) the extent of the information disclosed in the **public interest disclosure** is no greater than necessary to inform the recipient of the **disclosable matters**.
- (m) **Speaking up:** making a **protected disclosure** in accordance with this policy.
- (n) **Tax affairs:** affairs of FSC or an associate of FSC (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner of Taxation.

## 4 What should be disclosed?

- (a) FSC encourages **eligible whistleblowers** to **speak up** about **disclosable matters** to an **eligible recipient** in accordance with this policy.
- (b) The following types of disclosure should **not** be disclosed under this policy:
  - (i) a disclosure of a **personal work-related grievance**. This is not covered by this policy and may be reported by an employee, volunteer or officer of FSC in accordance with FSC's internal grievance procedures;
  - (ii) a disclosure that does not relate to a **disclosable matter**. This will not qualify for protection under part 7 of this policy or under the *Corporations Act 2001* (Cth); and
  - (iii) a disclosure that is malicious and false. This policy provides employees, volunteers and officers of FSC with an avenue to raise legitimate and serious suspicions about **disclosable matters**. It is unacceptable for FSC employees, volunteers and officers to make malicious and false disclosures, or to knowingly provide false or misleading information regarding a disclosure. The making of a malicious and false disclosure or the provision of knowingly false or misleading information may be subject to disciplinary action up to and including termination of an employee's employment, or termination of a volunteer's or officer's engagement.

## 5 How can disclosures be made?

- (a) A disclosure of a **disclosable matter** can be made by an **eligible whistleblower** in person, by phone or in writing to any **eligible recipient**.
- (b) A disclosure of a **disclosable matter** should provide as much information as possible, including but not limited to, details of the people involved in the **disclosable matter**, relevant dates, locations and any additional supporting evidence that may exist.
- (c) FSC's preferred channel for **speaking up** is to FSC's Senior Legal Counsel or General Counsel. Their contact details are available at

Phone: (02) 9299 3022

Email [info@fsc.org.au](mailto:info@fsc.org.au)

Post: FSC, Level 24, 44 Market Street, Sydney NSW 2000

addressed for the attention of General Counsel or Senior Legal Counsel.

- (d) Alternatively, an **eligible whistleblower** can **speak up** to Wentworth Advantage Hotline, an external, independently operated service authorised by FSC to accept contact by **eligible whistleblowers** on a confidential and anonymous basis or to the relevant external regulator. The contact details for Wentworth Advantage Hotline are (02) 8448 3200 or [info@myadvantage.com.au](mailto:info@myadvantage.com.au).
- (e) Disclosures made anonymously may still be protected under the *Corporations Act 2001* (Cth). However, if FSC is not able to contact the **eligible whistleblower**, its ability to conduct an investigation into the disclosure may be limited. FSC encourages **eligible whistleblowers** who wish to remain anonymous provide contact details, such as an email address which does not contain identifying information in the username, so two-way communication can be maintained throughout the investigation.
- (f) Before **speaking up** under this clause, an **eligible whistleblower** may wish to seek additional information from the **eligible recipient**, or seek independent legal advice.

## 6 Investigation of disclosures

- (a) When an **eligible whistleblower** makes a disclosure in accordance with this policy to an **eligible recipient** who is an employee or officer of FSC, FSC will facilitate an investigation to determine whether the disclosure is a **protected disclosure**.
- (b) In carrying out the investigation, all persons must ensure they do not breach the confidentiality requirements in clause 7.1(b).
- (c) As soon as reasonably practicable after the **eligible recipient** receives a disclosure of a **disclosable matter**, the **eligible recipient** must:
  - (i) provide the **eligible whistleblower** with the protections set out in clause 7 on an interim basis until the investigation is finalised; and

- (ii) ask the **eligible whistleblower** if they consent to their identity, or information that may identify them, being disclosed to any of the following:
  - (A) the individuals occupying the positions listed in clause 6(c)(iii);
  - (B) the person(s) investigating the **disclosable matter**;
  - (C) any other parties involved in the investigation of the **disclosable matter**, such as witnesses; and
- (iii) inform a **discloser governance officer** of the nature and substance of the **disclosable matter**. (If the **disclosable matter** involves information about an executive of FSC, including either of the **discloser governance officers**, the **eligible recipient** must inform the **external discloser governance officer** or an appropriate alternative individual).
- (d) The individual informed under clause 6(c)(iii) will:
  - (i) appoint a **discloser protection officer**; and
  - (ii) facilitate, or appoint an investigator to conduct, an investigation into:
    - (A) whether the disclosure is a **protected disclosure**; and
    - (B) whether the **disclosable matter** in question is substantiated, partly substantiated, or unsubstantiated.
- (e) The investigation:
  - (i) may be undertaken internally or through the engagement of an external investigator. The investigator will have internal independence of line management from the area of FSC's business the subject of the **disclosable matter**;
  - (ii) where appropriate, may be undertaken under client legal privilege;
  - (iii) will, provided they are contactable, involve regular updates to the **eligible whistleblower** as to the status of the investigation;
  - (iv) will be undertaken with the purpose of gathering all relevant evidence and in accordance with the rules of natural justice;
  - (v) may involve requests for further information from the **eligible whistleblower**, however, an **eligible whistleblower** who wishes to remain anonymous may refuse to answer questions they feel may reveal their identity; and
  - (vi) will be undertaken in a confidential manner, including compliance with the confidentiality requirements in clause 7.1. Information about the **disclosable matter** will only be disclosed where necessary in order for an investigation to proceed effectively.
- (f) Where the investigation determines that a **protected disclosure** was made, the **eligible whistleblower** will be afforded the protections in part 7 of this policy on an

ongoing basis.

- (g) If a **protected disclosure** is made and it relates to or mentions an employee or officer of FSC, FSC will ensure the fair treatment of the employee or officer by:
  - (i) to the extent possible given the requirements set out in clause 7.1(b), making the employee or officer aware of the nature of the allegations relating to or mentioning them and updating the employee or officer on the progress of the investigation;
  - (ii) giving the employee or officer an opportunity to respond to the allegations relating to or mentioning them; and
  - (iii) making the employee or officer aware of EAP services available to them.
- (h) A person may disclose information (other than the actual identity of the **eligible whistleblower**):
  - (i) if reasonably necessary for the purposes of investigating a matter that is relevant to the **protected disclosure**; and
  - (ii) if the person takes all reasonable steps to reduce the risk that the **eligible whistleblower** will be identified as a result.
- (i) The outcome of the investigation:
  - (i) will be recorded in writing in a formal internal report that will be confidential and is the property of the FSC;
  - (ii) to the extent possible given the requirements set out in clause 7.1(b), will be reported to the Administration and Risk Committee and the Board. If any member of the Administration and Risk Committee or the Board is involved in, or referred to, a **protected disclosure**, (including any entity which they represent as a member of the FSC), then the information outlined above will not be provided to that person(s); and
  - (iii) where appropriate, will be provided to the **eligible whistleblower** who made the **protected disclosure**; and
  - (iv) where appropriate, the persons to whom the **protected disclosure** relates.
- (j) Where an investigation does not substantiate the **disclosable matters** alleged in the **protected disclosure** the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the **protected disclosure** will be handled confidentially.

## 7 Protections for eligible whistleblowers who make protected disclosures

### 7.1 Protection of identity

- (a) An **eligible whistleblower** who **speaks up** is not required to identify themselves to

FSC or anyone else in order to be protected under this policy or the law.

- (b) If a person obtains information as a result of a **protected disclosure** that identifies or is likely to identify the **eligible whistleblower**, that person must not disclose that information to any person except:
  - (i) with the **eligible whistleblower's** consent; or
  - (ii) to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of relevant whistleblower protection legislation; or
  - (iii) to ASIC, APRA or the AFP; or
  - (iv) if the **protected disclosure** relates to **tax affairs** – to the Commissioner of Taxation; or
  - (v) to any government authority for the purpose of assisting the authority in the performance of its functions or duties, as long as it has also been disclosed to ASIC, APRA or the AFP (or, if the **protected disclosure** relates to **tax affairs**, the Commissioner of Taxation).
- (c) However, a person may disclose information (other than the actual identity of the **eligible whistleblower**) if reasonably necessary for the purposes of investigating a matter that is relevant to the **protected disclosure** and if the person takes all reasonable steps to reduce the risk that the **eligible whistleblower** will be identified as a result.
- (d) An **eligible whistleblower's** identity may be protected by FSC redacting documents, referring to the **eligible whistleblower** using language that does not identify their gender, age or role, and securely storing all materials relating to the **protected disclosure**.
- (e) If there has been a breach of clauses 7.1(b), 7.1(c) or 7.1(d), an **eligible whistleblower** may lodge a complaint with an executive officer of FSC, or a regulatory body such as ASIC, APRA or the ATO.

## 7.2 Protection from certain liability

- (a) An **eligible whistleblower** will not be subject to any civil, criminal or administrative liability for making a **protected disclosure**.
- (b) However, this does not prevent an **eligible whistleblower** from being subject to any civil, criminal or administrative liability for conduct of the **eligible whistleblower** that is revealed by the **protected disclosure**.
- (c) FSC will not exercise any contractual right, or seek any contractual remedy, against an **eligible whistleblower** on the basis that the **eligible whistleblower** made the **protected disclosure**, including termination of contract or any other detrimental conduct.
- (d) If the **protected disclosure** is made to the Commissioner of Taxation, or is a **public interest disclosure** or an **emergency disclosure**, the information contained in the **protected disclosure** is not admissible in evidence against the

person in criminal proceedings or in proceedings for the imposition of a penalty.

### 7.3 Protection from detriment

- (a) An **eligible whistleblower** must not suffer **detriment** or be otherwise disadvantaged in reprisal for **speaking up**.
- (b) Specifically, no one may cause or threaten to cause **detriment** to another person because they believe or suspect that any person may have made, proposes to make, or could make a **protected disclosure**.
- (c) FSC will take all reasonable steps to protect **eligible whistleblowers** who **speak up** from suffering **detriment** including by:
  - (i) ensuring all **eligible recipients** who are employees or officers of FSC are trained to identify and report behaviour that may cause **detriment**;
  - (ii) ensuring that all employees and officers of FSC are made aware of this policy and the right to make a **protected disclosure** without suffering **detriment**; and
  - (iii) enabling **eligible whistleblowers** to make a complaint to an **eligible recipient** if they believe they have suffered **detriment**.

### 7.4 Availability of compensation

An **eligible whistleblower** may seek compensation and other remedies through the courts if they suffer loss, damage or injury because of **detriment**, and FSC failed to take reasonable precautions and exercise due diligence to prevent that **detriment**.

### 7.5 Compliance with protections for eligible whistleblowers

An employee or officer of FSC who fails to comply with clause 7.1, 7.2 or 7.3 may be subject to disciplinary action up to and including termination of employment. Such a person may also be in breach of the law, which may result in:

- (a) civil liability to pay compensation, damages and/or a penalty; and/or
- (b) criminal liability to pay penalties and/or a maximum of two years' imprisonment.

## 8 Training

FSC will carry out training for FSC employees to educate them on their rights and obligations under this policy and applicable whistleblower legislation.

FSC will carry out separate training for **eligible recipients** within FSC on how to respond to **protected disclosures**.

## **9 Review and amendment**

This policy will be periodically reviewed (and, if necessary, amended) by FSC to ensure it is operating efficiently and complies with applicable legislation.

## **10 Breach**

Any breach of this policy may result in disciplinary action up to and including termination of employment or engagement with FSC.

## **11 Authority**

This policy has been approved by the FSC Administration and Risk Committee and the Board and operates with effect on and from 1 January 2020. This policy replaces all earlier versions of FSC's Speak Up Policy.

## Annexure A - Key Contacts

Position in FSC	Contact Details
<b><i>Discloser governance officer</i></b>	
Chief Executive Officer	(02) 9299 3022 Level 24, 44 Market Street, Sydney NSW 2000 <a href="mailto:info@fsc.org.au">info@fsc.org.au</a>
<b>Mark your email for the attention of the CEO</b>	
General Counsel	(02) 9299 3022 Level 24, 44 Market Street, Sydney NSW 2000 <a href="mailto:info@fsc.org.au">info@fsc.org.au</a>
<b>Mark your email for the attention of the General Counsel</b>	
<b><i>Eligible recipients</i></b>	
Chief Executive Officer	(02) 9299 3022 Level 24, 44 Market Street, Sydney NSW 2000 <a href="mailto:info@fsc.org.au">info@fsc.org.au</a>
<b>Mark your email for the attention of the CEO</b>	
Director of Member Services	(02) 9299 3022 Level 24, 44 Market Street, Sydney NSW 2000 <a href="mailto:info@fsc.org.au">info@fsc.org.au</a>
<b>Mark your email for the attention of the Director, Member Services</b>	
General Counsel	(02) 9299 3022 Level 24, 44 Market Street, Sydney NSW 2000 <a href="mailto:info@fsc.org.au">info@fsc.org.au</a>
<b>Mark your email for the attention of the General Counsel</b>	

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Financial Controller

(02) 9299 3022

Level 24, 44 Market Street, Sydney NSW 2000

[info@fsc.org.au](mailto:info@fsc.org.au)

**Mark your email for the attention of the Financial  
Controller**

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Senior Legal Counsel

(02) 9299 3022

Level 24, 44 Market Street, Sydney NSW 2000

[info@fsc.org.au](mailto:info@fsc.org.au)

**Mark your email for the attention of the Senior  
Legal Counsel**

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