



# Whistleblower Protection Policy

## 1. Principles of Protected Disclosures

NPP Australia Limited (**NPPA**) is committed to best practice corporate governance. It encourages transparency, integrity and accountability, and supports these values by implementing an effective and robust protected disclosure program in accordance with applicable laws<sup>1</sup> and standards<sup>2</sup>. This Policy is intended to:

- encourage officers, employees and others to raise concerns they may have in relation to corrupt, illegal or unethical conduct, or conduct that could otherwise result in loss to NPPA or damage to its reputation;
- establish protections available to a Whistleblower who makes a report where that Whistleblower has reasonable grounds to suspect that the relevant information concerns misconduct, or an improper state of affairs, against reprisals and adverse actions;
- establish investigation procedures which are robust, effective and independent;
- provide guidance to the Board in relation to investigation and resolution of misconduct subject of a Protected Disclosure; and
- to meet NPPA's legal and regulatory obligations.

This Policy is available on the:

- NPP Portal; and
- NPPA's public website.

### 1.1 What is a Protected Disclosure?

For the purpose of this Policy, a Protected Disclosure is:

- (a) a verbal or written report;
- (b) made by a **Whistleblower**;
- (c) about **Reportable Conduct** ;
- (d) to a person who is designated as an **Eligible Recipient** or other entity as set out in part 1.4.

For clarity, disclosures that concern personal employment grievances of the discloser only, and do not have significant implications for NPPA, have limited protection under law.<sup>3</sup> Any personal employment grievances should be referred to your manager or another senior manager of NPPA in the first instance.

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<sup>1</sup> For example, part 9.4AAA of the *Corporations Act 2001* (Cth) (**Corporations Act**)

<sup>2</sup> AS 8004 - 2003

<sup>3</sup> For further information, please see s1317AADA of the *Corporations Act*

## 1.2 Who is a Whistleblower?

A Whistleblower is an individual who is, or has been, an officer or employee of NPPA, a contractor or supplier of NPPA, an individual employed by a contractor or supplier of NPPA, an “associate”<sup>4</sup> of NPPA, or a relative, dependant or spouse of any such individuals, who has reasonable grounds to suspect Reportable Conduct has occurred.

## 1.3 What is Reportable Conduct? What types of disclosures qualify for protection under law?

- (a) Reportable Conduct is conduct by a person or persons connected with NPPA which, in the reasonable opinion of a Whistleblower, is:
- (i) dishonest;
  - (ii) fraudulent;
  - (iii) corrupt;
  - (iv) illegal;
  - (v) in breach of Commonwealth or state legislation (for example, competition law, tax or work, health and safety legislation);
  - (vi) unethical (whether a breach of NPPA’s charter or code of conduct or generally);
  - (vii) represents a danger to the public or the financial system; or
  - (viii) other serious improper conduct.
- (b) While all Reportable Conduct is protected under this Policy, only certain types of disclosures (i.e. about “Disclosable Matters”) are protected by law.<sup>5</sup> “Disclosable Matters” involve information that a Whistleblower has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances, in relation to NPPA where NPPA (including its employees or officers) has engaged in conduct that:
- (i) constitutes an offence against, or a contravention of, a provision of any of the following:
    - (A) the Corporations Act;
    - (B) the *Australian Securities and Investments Commission Act 2001*;
    - (C) the *Banking Act 1959*;
    - (D) the *Financial Sector (Collection of Data) Act 2001*;
    - (E) the *Insurance Act 1973*;
    - (F) the *Life Insurance Act 1995*;
    - (G) the *National Consumer Credit Protection Act 2009*;
    - (H) the *Superannuation Industry (Supervision) Act 1993*;
    - (I) an instrument made under an Act referred to in parts 1.3(b)(i)(A) – (H) above;
  - (ii) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
  - (iii) represents a danger to the public or the financial system;

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<sup>4</sup> As defined by the Corporations Act and *Taxation Administration Act 1953* (Cth) (**Taxation Administration Act**) (where relevant).

<sup>5</sup> Corporations Act and Taxation Administration Act

(iv) is prescribed by regulation.

In relation to the tax affairs of NPPA, to qualify for protection under the tax whistleblower regime, the eligible whistleblower must have reasonable grounds to suspect that the information indicates misconduct or an improper state of affairs or circumstances in relation to the tax affairs of NPPA. The eligible whistleblower may assist the eligible recipient to perform its functions or duties in relation to those tax affairs.

(c) Disclosures that are not about Disclosable Matters do not qualify for protection under the Corporations Act (or the Taxation Administration Act, where relevant). However such disclosures may be protected under other legislation, such as the *Fair Work Act 2009* (Cth).

#### 1.4 Who is an Eligible Recipient? Who else may disclosures be made to?

For the purposes of this Policy, an Eligible Recipient is:

- (a) an officer or senior manager of NPPA; or
- (b) an auditor of NPPA.

While legal practitioners are not considered Eligible Recipients, a disclosure of information by a Whistleblower will qualify for protection if the disclosure is made to that legal practitioner for the purpose of obtaining legal advice or legal representation in connection with actual or suspected Reportable Conduct.

An Eligible Recipient who is an officer or senior manager of NPPA is responsible (whilst employed or engaged in that capacity) for ensuring that a Whistleblower, is protected from adverse actions (such as those described in part 1.6) as a result of making a Protected Disclosure.

While NPPA encourages Whistleblowers to report Reportable Conduct to NPPA in the first instance, a disclosure of information about a Disclosable Matter by a Whistleblower also qualifies for protection if the disclosure is made to ASIC, APRA or other prescribed Commonwealth authorities.<sup>6</sup> For further information about how you may make a Protected Disclosure to certain Commonwealth authorities, please refer to the following resources:

- **ASIC:** <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/how-asic-handles-whistleblower-reports/>
- **APRA:** <https://www.apra.gov.au/become-a-whistleblower-or-make-a-public-interest-disclosure>
- **ATO:** <https://www.ato.gov.au/general/gen/whistleblowers/>

A “public interest disclosure” and “emergency disclosure” made to a member of Parliament or a journalist also qualify for protection under certain circumstances<sup>7</sup>. NPPA would encourage Whistleblowers to seek independent legal advice before making a public interest disclosure or an emergency disclosure due to the complexity of such matters.

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<sup>6</sup> s1317AA(1)(b) of the Corporations Act

<sup>7</sup> s1317AAD of the Corporations Act

## 1.5 How should a Protected Disclosure be made?

To enable NPPA to identify and address wrongdoing as early as possible, we encourage Whistleblowers to report Reportable Conduct to NPPA in the first instance. You may contact NPPA's General Counsel by mail to:

Attention: General Counsel  
NPP Australia  
Level 9  
420 George Street  
Sydney NSW 2000

A Protected Disclosure may be made to an Eligible Recipient or other entity set out in Part 1.4 either verbally or in writing (depending on the channel). Reports may be made anonymously and/or confidentially, securely and in some cases, outside of business hours. Disclosures made anonymously may still be protected under law. Whistleblowers can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised.

Nothing in this Policy shall be construed as limiting the rights of a Whistleblower to report issues to external bodies which are responsible for the investigation and enforcement of workplace health and safety laws, bullying and harassment laws and the like.

## 1.6 What happens after a Protected Disclosure is made?

Protected Disclosures will be investigated in accordance with Section 2 of this Policy.

The identity of a Whistleblower, information that is likely to lead to the identification of a Whistleblower, and the contents of a Protected Disclosure will be treated as confidential, and will not be disclosed to a person connected with the investigation of the conduct by the Eligible Recipient without consent unless Part 9.4AAA of the Corporations Act applies.

Where a Whistleblower has made a report on an identified basis, feedback after completion of the investigation will be provided.

Provided a Whistleblower has made a report on reasonable grounds, no adverse action will be taken against him or her by NPPA. NPPA will focus on the substance, rather than the motive, of a Protected Disclosure. In particular, he or she shall not be personally disadvantaged or victimised as a result of having reported Reportable Conduct, including by:

- (a) termination of employment or services contract;
- (b) demotion;
- (c) harassment;
- (d) discrimination;
- (e) formal censure;
- (f) harm or injury to that person, including psychological harm;
- (g) damage to that person's property, reputation, business or financial position.

NPPA will provide protection to those that are not directly employed by NPPA at the time of the disclosure, however we will not be able to provide protection outside of NPPA's control, for example in relation to an individual's employment conditions with another employer.

A report made by officers or employees of NPPA that is not provided on reasonable grounds or is malicious constitutes a serious breach of this Policy and may result in disciplinary action.

There are certain protections that are available to Whistleblowers at law<sup>8</sup> (not just under this Policy), where a Disclosable Matter (rather than Reportable Conduct) is reported by a Whistleblower to an Eligible Recipient or other entity as set out in part 1.4, including:

- confidentiality (subject to s1317AAE of the Corporations Act);
- protection from detrimental acts;<sup>9</sup>
- the right to compensation and other remedies<sup>10</sup> where a Whistleblower suffers loss, damage or injury because of a disclosure and NPPA failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct; and
- civil, criminal and administrative liability protection.<sup>11</sup>

## **1.7 What happens if this Policy is breached?**

A breach of this Policy may lead to disciplinary action, including dismissal.

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<sup>8</sup> Corporations Act

<sup>9</sup> ss 1317AD and 1317ADA of the Corporations Act

<sup>10</sup> s 1317AE of the Corporations Act

<sup>11</sup> s 1317AB(1) of the Corporations Act

## 2 Investigation Response Plan

- (a) All Protected Disclosures will be examined and, unless clearly frivolous, referred for investigation in accordance with this Investigation Response Plan.
- (b) The Eligible Recipient will refer the Protected Disclosure to the General Counsel of NPPA or that person's duly authorised delegate<sup>12</sup> (**Investigator**) for investigation.
- (c) The Investigator is responsible for:
- i) establishing a confidential investigation framework;
  - ii) assessing the Whistleblower's grounds for making the report to determine that it is within the definition of 'Protected Disclosure';
  - iii) conducting and documenting the investigation process;
  - iv) gathering evidence (which may include authorising searches of NPPA records and systems);
  - v) labelling and securely storing evidence<sup>13</sup>;
  - vi) labelling and securely storing transcripts of interviews: see paragraph (d) for interviewee's rights re transcript review;
  - vii) labelling and securely storing notes of inquiries;
  - viii) making an initial determination in relation to the probative value of all available evidence i.e. whether Reportable Conduct is substantiated or not, on the balance of probabilities (if criminal conduct is alleged, to the *Briginshaw* standard);
  - ix) making such recommendations as are appropriate to ensure verifiable corruption, compliance failures or systemic misconduct is corrected: see paragraph (f);
  - x) making such recommendations of disciplinary action as may be appropriate in relation to a person who makes false, malicious or groundless allegations;
  - xi) regular and effective internal reporting of findings and recommendations to the Board of NPPA (or a sub-Committee of the Board)<sup>14</sup>; and
  - xii) providing feedback to the Whistleblower (where possible).
- (d) The Investigator must conduct interviews and inquiries in a timely and impartial manner, without bias and otherwise in accordance with principles of procedural fairness; allegations of misconduct (other than criminal activity) shall be put to the person in relation to whom the allegation is made, and that person afforded an opportunity to respond. An interviewee (including an identified Whistleblower) shall be entitled to have the Eligible Recipient (where that person is an officer or senior manager of NPPA) or another person present during an interview process, and to review the draft transcript of the interview.
- (e) The Investigator has no power to compel a person to give information, or to attend an interview. A person's refusal to cooperate will be documented.

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<sup>12</sup> In the event that either the Eligible Recipient or General Counsel considers the latter is subject to a conflict of interest which would compromise the integrity of the investigation, the Eligible Recipient will refer the Protected Disclosure to the Chair of the board of directors or the CEO who will appoint another person to conduct the investigation.

<sup>13</sup> Original documentary evidence must not be altered or annotated.

<sup>14</sup> Advice prepared by internal or external legal resources for the purposes of advising NPPA is subject to legal professional privilege.

- (f) The Investigator may make recommendations upon completion of an investigation, including:
- disciplinary action
  - dismissal of disciplinary action
  - referral to an external agency for further investigation or prosecution
  - introduction of policies, procedures or practices
  - change of existing policies, procedures or practices
  - redress for a Whistleblower
- (g) A Whistleblower shall be informed of the outcome of the investigation upon completion if the Whistleblower can be contacted (including through anonymous channels). The length of an investigation will vary depending on the complexity of the matter.
- (h) An independent and confidential counselling service is available upon request for any officer or employee of NPPA that is a Whistleblower.
- (i) All records relating to Protected Disclosures and the investigation of Reportable Conduct will be treated as confidential and maintained by the Investigator in a separate and secure file. Only those requiring access for a legitimate purpose will have access to these files. This access will be determined by the Chair of the Board of NPPA or the Chief Executive Officer.

## Change history

Date	Version	Reviewed by	Approved by	Change
30/06/2015	1.0	ARFC	Board	First version
07/04/2016	1.0	ARFC		Annual review: no changes.
22/02/2018	2.0	ARFC	Board	Annual Review: amended to replace references to Company Secretary with General Counsel.
30/05/2019	2.0	PCC		Annual review: no changes.
09/03/2020	3.0	NPPA	NPPA	Amended due to regulatory changes. See <i>Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)</i>
10/12/2020	3.0	NPPA		Copied into Governance template.