

TYRE STEWARDSHIP AUSTRALIA

WHISTLEBLOWER PROTECTION POLICY

1 INTRODUCTION

Tyre Stewardship Australia Limited (TSA) recognises the value in developing and fostering a culture of corporate compliance, ethical decision-making and protecting **eligible whistleblowers** who make **protected disclosures** from suffering **detriment**.

TSA encourages the reporting of any instances of suspected misconduct including unethical, illegal, fraudulent or undesirable conduct involving TSA. TSA will ensure that those persons who make a report shall do so without fear of intimidation, disadvantage or reprisal.

It is expected that employees of TSA who become aware of a **disclosable matter** will make a disclosure under this policy.

2 PURPOSE AND AVAILABILITY

The purpose of this policy is to:

- prevent and detect **disclosable matters**;
- outline the process by which a **protected disclosure** may occur, including how and to whom a **protected disclosure** should be made;
- outline the process by which TSA will investigate **protected disclosures**;
- inform **eligible whistleblowers** who make **protected disclosures** about the protections from **detriment**;
- outline the process for fair treatment of persons to whom a **protected disclosure** relates or mentions; and
- comply with the *Corporations Act 2001*, which provides certain protections to **eligible whistleblowers**.

This policy deals with how employees and officers of TSA should deal with **protected disclosures** that relate to TSA, its employees or officers, or its **associates**.

Terms in **bold type** are defined in section 6 of this policy.

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

This policy will be made available to all employees, officers and contractors of TSA.

3 HOW CAN I MAKE A DISCLOSURE?

3.1 What should be disclosed?

- (a) TSA encourages **eligible whistleblowers** to disclose **disclosable matters** to **eligible recipients** in accordance with this policy.
- (b) However, the following types of disclosures 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 in accordance with TSA’s human resources policies (as applicable), including the Discrimination, Bullying and Harassment policy and Grievance Procedure as contained in the Employee Handbook;
 - (ii) a disclosure that does not relate to a **disclosable matter**. This will not qualify for protection under section 5 of this policy or under the *Corporations Act 2001*; and
 - (iii) a disclosure that is malicious and false. This policy provides employees and officers of TSA with an avenue to raise legitimate and serious suspicions about **disclosable matters**. It is unacceptable for TSA employees 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 result in an employee or officer being subject to disciplinary action up to and including termination of an employee’s employment, or termination of an officer’s engagement.

3.2 How can disclosures be made?

- (a) A disclosure of a **disclosable matter** can be made by an **eligible whistleblower** in person, by phone, by video conference or in writing to any **eligible recipient**.
- (b) A disclosure of a **disclosable matter** can be made to any of the following:

Protected Disclosure Officers:

TSA’s preferred channel for making a disclosure is to one of the following Protected Disclosure Officers:

Chief Executive Officer Ms Lina Goodman
 Phone: 0491 277 051
 Email: ceo@tyrestewardship.org.au
 Mail: Marked “Confidential”
 c/- Tyre Stewardship Australia
 2/59 Keele St, Collingwood, VIC 3066

Chair of the Board Mr David Spear
 Phone: 0408 404 910
 Email: david.spear@vuca.com.au
 Mail: Marked “Confidential”
 c/- Tyre Stewardship Australia
 2/59 Keele St, Collingwood, VIC 3066

Chair of Research
Advisory Committee

Mr Peter Kreitals
Phone: 0412 101 590
Email: peterk@kreitals.com.au
Mail: Marked "Confidential"
c/- Tyre Stewardship Australia
2/59 Keele St, Collingwood, VIC 3066

Managing Director
Now Actually Human
Resources

Jenna Paulin
Phone: 0447 016 045
Email: jenna.paulin@nowactually.com.au

- (c) Alternatively, a disclosure may be made to the relevant external regulator or to any other **eligible recipient**.
- (d) Disclosures made anonymously may still be protected under the *Corporations Act 2001*. However, if TSA is not able to contact the **eligible whistleblower**, its ability to conduct an investigation into the disclosure may be limited.
- (e) Before formally making a disclosure under this section, an **eligible whistleblower** may wish to seek additional information from an **eligible recipient**, or seek independent legal advice.

4 TSA'S INVESTIGATION OF DISCLOSURES

- (a) When an **eligible whistleblower** makes a disclosure in accordance with this policy of a **disclosable matter** to an **eligible recipient** who is an employee or officer of TSA, TSA will facilitate an investigation into the disclosure.
- (b) The investigation will be carried out on the assumption that the disclosure is a **protected disclosure**, unless proven otherwise. This means all persons must ensure they do not breach the protections in section 5.
- (c) As soon as reasonably practicable after an **eligible recipient** receives from an **eligible whistleblower** a disclosure of a **disclosable matter** relating to TSA, the **eligible recipient** must:
 - (i) provide the **eligible whistleblower** with the protections set out in section 5 on an interim basis until the investigation is finalised;
 - (ii) confirm in writing whether the **eligible whistleblower** consents to their identity, or information that may identify them, being disclosed to:
 - (A) any of the Protected Disclosure Officers; and/or
 - (B) any other person(s) facilitating the investigation into the **disclosable matter**; and/or
 - (C) any other parties involved in the investigation of the **disclosable matter**, such as the investigator or witnesses; and

- (iii) inform one of the Protected Disclosure Officers of the nature and substance of the **disclosable matter**, maintaining strict compliance with the confidentiality requirements in section 5.1 of this policy (if the **eligible recipient** is a Protected Disclosure Officer, this step may not be necessary). If the **disclosable matter** involves information about one of the Protected Disclosure Officers, the **eligible recipient** must inform another one of the Protected Disclosure Officers.
- (d) Under the *Corporations Act 2001*, a person may disclose information contained in a disclosure (other than the actual identity of the **eligible whistleblower**) without the **eligible whistleblower's** consent:
 - (i) if reasonably necessary for the purposes of investigating a matter relevant to the disclosure; and
 - (ii) if the person takes all reasonable steps to reduce the risk that the **eligible whistleblower** will be identified as a result.
- (e) The individual informed under section 4(c)(iii) will facilitate an investigation into
 - (i) whether the disclosure is in fact a **protected disclosure**; and
 - (ii) whether the **disclosable matter** in question is substantiated, partly substantiated, or unsubstantiated.
- (f) The investigation:
 - (i) may be undertaken internally or through the engagement of an external investigator;
 - (ii) where appropriate, may be undertaken under client legal privilege;
 - (iii) where appropriate, may involve regular updates to the **eligible whistleblower**;
 - (iv) will be undertaken with the purpose of gathering all relevant evidence and in accordance with the rules of natural justice; and
 - (v) will be undertaken in a confidential manner, including compliance with the confidentiality requirements in section 5.1.
- (g) Where the investigation determines that a **protected disclosure** was made:
 - (i) the **eligible whistleblower** will be afforded the protections in section 5 on an ongoing basis;
 - (ii) TSA will ensure the fair treatment of any employees or officers mentioned in the **protected disclosure** by:
 - (A) to the extent possible given the requirements in section 5.1(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;

- (B) giving the employee or officer an opportunity to respond to the allegations relating to or mentioning them; and
- (C) making the employee or officer aware of support services available to them.

5 PROTECTION OF WHISTLEBLOWERS

TSA is committed to ensuring confidentiality in respect of all matters raised under this policy, so that those who make a disclosure on reasonable grounds are treated fairly and do not suffer any detriment.

5.1 Protection of identity and confidentiality

- (a) An **eligible whistleblower** who makes a **protected disclosure** is not required to identify themselves to TSA 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) as permitted by section 4(d) of this policy; or
 - (iii) 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
 - (iv) to the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority or the Australian Federal Police; or
 - (v) if the **protected disclosure** relates to **tax affairs** – to the Commissioner of Taxation.
- (c) An **eligible whistleblower's** identity may be protected by TSA redacting information from certain 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**.
- (d) TSA encourages **eligible whistleblowers** who make a disclosure, where they are comfortable doing so, to provide their name and consent to this being shared with the investigator to facilitate an effective investigation into their disclosure. Investigations into anonymous complaints can be limited if further information is needed from the **eligible whistleblower**.

5.2 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 their own conduct that is revealed by the **protected disclosure**.
- (c) TSA 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.
- (d) Information contained in a **protected disclosure** made to the Commissioner of Taxation, **public interest disclosure** or **emergency disclosure** is not admissible in evidence against the **eligible whistleblower** in criminal proceedings or in proceedings for the imposition of a penalty.

5.3 Protection from detriment

- (a) An **eligible whistleblower** must not suffer **detriment** or be otherwise disadvantaged in reprisal for making a **protected disclosure**.
- (b) 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) TSA will take all reasonable steps to protect **eligible whistleblowers** who make **protected disclosures** from suffering **detriment** including by:
 - (i) ensuring all **eligible recipients** who are employees or officers of TSA are trained to identify and report behaviour that may cause **detriment**;
 - (ii) ensuring that all employees and officers of TSA 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**.

5.4 Availability of compensation

A person may seek compensation and other remedies through the courts if they suffer loss, damage or injury because of **detriment** in contravention of this policy or the law, and if TSA failed to take reasonable precautions and exercise due diligence to prevent that **detriment**.

5.5 Compliance with protections for eligible whistleblowers

An employee or officer of TSA who fails to comply with sections 5.1, 5.2, or 5.3, may be subject to disciplinary action up to and including termination of employment or termination of an officer's engagement. 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.

5.6 Protection of files and records

All files and records created during an investigation of a **protected disclosure** will be retained under strict security.

The release of information relating to an **eligible whistleblower** in breach of this policy or the law will be regarded as a serious matter and will be dealt with under TSA's disciplinary procedures.

6 DEFINITIONS

- (a) **Associate** is defined in section 318 of the *Income Tax Assessment Act 1936*.
- (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.
- (c) **Disclosable matter** means information disclosed by an **eligible whistleblower** where the **eligible whistleblower** has reasonable grounds to suspect that the information:
- (i) concerns misconduct or an improper state of affairs or circumstances (including but not limited to dishonest conduct, unlawful conduct, corruption or fraud) in relation to TSA or a related body corporate of TSA; or
 - (ii) indicates that TSA, or an officer or employee of TSA, or a related body corporate of TSA, or an officer or employee of a related body corporate of TSA, has engaged in conduct that:
 - (A) represents a danger to the public or the financial system; or
 - (B) contravenes 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

- (C) contravenes any other law of the Commonwealth that is punishable by imprisonment for 12 months or more; or
 - (iii) indicates misconduct, or an improper state of affairs or circumstances, in relation to the **tax affairs** of TSA or an **associate** of TSA, where the **eligible whistleblower** considers the information may assist the **eligible recipient** to perform functions or duties in relation to the **tax affairs** of TSA or an **associate** of TSA.
- (d) **Eligible whistleblower** means:
- (i) an individual who is a current or former:
 - (A) officer of TSA;
 - (B) employee of TSA;
 - (C) individual (paid or unpaid) who supplies services or goods to TSA, including volunteers;
 - (D) employee of an entity (paid or unpaid) that supplies services or goods to TSA;
 - (E) an individual who is an associate of TSA (within the meaning of the *Corporations Act 2001*); or
 - (ii) a relative, dependant or spouse of an individual referred to in section 6(d)(i).
- (e) **Eligible recipient** means:
- (i) a senior manager or an officer of TSA or of a related body corporate of TSA;
 - (ii) a person authorised by TSA to receive **protected disclosures**;
 - (iii) an auditor, or a member of an audit team conducting an audit, of TSA or of a related body corporate of TSA;
 - (iv) an actuary of TSA or of a related body corporate of TSA;
 - (v) the Australian Securities and Investments Commission;
 - (vi) the Australian Prudential Regulation Authority;
 - (vii) a prescribed Commonwealth authority;
 - (viii) 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;
 - (ix) in addition to the above, where the **disclosable matter** is in relation to **tax affairs**:

- (A) any employee or officer of TSA who has functions or duties that relate to the **tax affairs** of TSA;
 - (B) a registered tax agent or BAS agent who provides tax agent or BAS services to TSA; or
 - (C) the Commissioner of Taxation.
- (f) **Emergency disclosure** means 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 one or more persons or 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.
- (g) **Personal work-related grievance** means a grievance about any matter in relation to the **eligible whistleblower's** employment, or former employment, which:
- (i) has (or tends to have) implications for the **eligible whistleblower** personally;
 - (ii) does not have significant implications for TSA (or another organisation regulated by whistleblower protection laws) that are unrelated to the **eligible whistleblower**; and
 - (iii) does not relate to conduct (or alleged conduct) set out in section 6(c)(ii).

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** employment;
- decisions to suspend, discipline or dismiss the **eligible whistleblower**; and/or
- conduct (or alleged conduct) in respect of workplace bullying, harassment, sexual harassment or discrimination.

A **personal work-related grievance** is not a **disclosable matter**, except to the extent that it concerns **detriment** to the **eligible whistleblower** in contravention of section

5.3.

- (h) **Protected disclosure** means a disclosure by an **eligible whistleblower** to an **eligible recipient** of a **disclosable matter**.
- (i) **Public interest disclosure** means 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 they made 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 section 6(i)(ii), 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 matter**.
- (j) **Tax affairs** means affairs of TSA or its **associates** relating to any tax imposed, assessed or collected by or under a law administered by the Commissioner of Taxation.

AMENDMENT OF THIS POLICY

This policy cannot be amended without approval from the TSA Board. It will be reviewed annually to ensure that it remains effective, legally compliant and meets best practice standards.

REFERENCES AND RELATED DOCUMENTS

TSA Code of Conduct

DOCUMENT CONTROL

Authorised by:	Signature:	Date:
Lina Goodman CEO, Tyre Stewardship AU		13 December 2019

DOCUMENT CHANGE CONTROL HISTORY

Version No.	Version Date	Author	Nature of Amendment
1	13 Dec 2019	Lina Goodman	Draft
1.1	31 Jan 2020	Marissa Johnston	Formatted Whistleblower Policy
1.2	15 Sep 2020	Marissa Johnston	Updated Jenna Paulin's details
1.3	26 July 2021	Lina Goodman	Amendment of Whistleblower Policy

This policy supersedes all previous versions