

Whistleblowing Policy

Policy owner	CEO
Policy issue date	March 2021
Last Policy review date	November 2022
Policy review date	February 2024

Introduction

NSW Land Registry Services (**NSW LRS**) is committed to the highest standards of legal, ethical and moral behaviour. These standards are articulated formally through the code of conduct and are promoted through training and leadership communication.

Performance against these standards will normally be discussed through performance management processes and any deficiencies highlighted and remedied.

On occasions there will be times when breaches of standards need to be raised independently and this policy applies in those circumstances.

Purpose

The purpose of this policy is to provide a supportive workplace where misconduct within NSW LRS can be raised without fear of retribution. It is intended to encourage the reporting of misconduct, whether openly or, if required, anonymously and to ensure whistleblowers feel confident raising concerns internally without fear of intimidation or reprisal. This policy is an important tool for helping NSW LRS to identify misconduct that may not be uncovered unless there is a safe and secure means for disclosing misconduct. It also provides transparency around the NSW LRS framework for receiving, handling and investigating whistleblower disclosures.

When will whistleblower protections apply?

The protections will only apply in circumstances where each of the following requirements are met:

- the person who makes the disclosure is within the categories of people who are prescribed as eligible whistleblowers (see 'Who is eligible for whistleblower protection' below);
- the disclosure is of a type that qualifies for whistleblower protection (see 'Disclosable Matters' below); and
- the disclosure is made to a person to whom a disclosure can be made (see 'Procedure' below).

Who is eligible for whistleblower protection?

Any person who is, or has been, one of the following:

- NSW LRS officers or employees (including current and former employees who are permanent, part-time, fixed-term or temporary, interns, secondees, managers and directors);
- NSW LRS contractor or consultant (and their employees); or
- supplier of services or goods whether unpaid or not (and their employees),

or a relative, dependent or spouse of any of the above.

Disclosable matters

A whistleblower is a person who reports misconduct (being fraud, negligence, default, breach of trust and breach of duty) in accordance with this policy. NSW LRS encourages the disclosure of information that suggests misconduct, an improper state of affairs or circumstances or a contravention of legislation or regulatory requirements. Disclosable matters include conduct that may not involve a contravention of a particular law.

NSW LRS considers **misconduct** to be any conduct which:

- is fraudulent or corrupt such as falsification of records, contracts or data, money laundering, adopting questionable or improper accounting practices or bribery;
- is illegal, such as theft, dealing in or use of illicit drugs, violence (actual or threatened), harassment or intimidation, criminal damage to property or other breaches of any law or regulatory requirement in Australia;
- is unethical, such as discrimination, oppression, acting dishonestly, altering company records, wilfully making false entries in official records, or wilfully breaching NSW LRS' Code of Conduct;
- is potentially damaging to NSW LRS, such as maladministration;
- is harmful or potentially harmful to a NSW LRS employee or contractor such as unsafe work practices or wilful disregard to the safety of others in the workplace;
- may cause serious financial or non-financial loss to NSW LRS, damage its reputation or otherwise be detrimental to the interests of NSW LRS;
- involves unjustified or personal searches of the register that is not a proper function of an employee's or contractor's role;
- is in contravention of Modern Slavery requirements (where coercion, threats or deception are used to exploit victims and undermine their freedom, such as forced labour); or
- involves any other kind of serious malpractice or impropriety including retaliatory action against a whistleblower for having made a disclosure.

Disclosures that are not about disclosable matters do not qualify for protection under the

Corporations Act. Such disclosures may be protected under other legislation, such as the *Fair Work Act 2009*.

Procedure

A whistleblower who wishes to seek additional information before making a disclosure can contact any of the persons noted below under 'Who a whistleblower can report to'.

A whistleblower wanting to report misconduct should do their best to ensure that the report is:

- factually accurate;
- complete from first-hand knowledge; and
- based on, as a minimum, reasonable grounds to suspect the misconduct.

A whistleblower will not be penalised and can still qualify for protections even if the information turns out to be incorrect. However, you must not make a report you know is not true, or is misleading. Where it is found that you knowingly made a false report, this may be a breach of the Code of Conduct and will be considered a serious matter that may result in disciplinary action. There may also be legal consequences if you make a knowingly false report.

It is not the whistleblower's job to investigate or prove a case of misconduct.

A whistleblower can make a report anonymously, however the value of that information may be of limited use and NSW LRS will not be able to follow up with the whistleblower for further information if necessary or to tell the whistleblower what steps NSW LRS may take based on the report made. A whistleblower can refuse to answer questions that they feel could reveal their identity at any time, including during any follow-up conversations. If your identity is known to the person to whom you made a disclosure, you can ask them to adopt a pseudonym for the purposes of disclosure if you prefer that the person not disclose your identity to others.

A whistleblower who has committed or been involved in misconduct themselves will not be immune from disciplinary action merely because they have reported misconduct in accordance with this policy. However, the person's conduct in making the report is likely to be considered in determining what disciplinary action is appropriate.

Who a whistleblower can to report to

A whistleblower should report misconduct to the Chief People Officer (**CPO**) of NSW LRS and state clearly that they are making a report under this policy. Where it is not possible or appropriate to report suspicion of misconduct to the CPO, reports should be raised directly to the General Counsel. In exceptional circumstances, when neither is appropriate, a whistleblower report may be made to the Chair of the Audit & Risk Committee or the Chair of the NSW LRS Board. Disclosures can be made outside of business hours.

Current contact details for these parties are as follows:

Chief People Officer
Brad Griffiths
brad.griffiths@nswlrs.com.au

General Counsel
Nicole Graham
nicole.graham@nswlrs.com.au

Audit and Risk Committee Chair
Elizabeth Hallett
elizabeth.hallett@nswlrs.com.au

Board Chair
Andrew Dutton
andrew.dutton@nswlrs.com.au

Reports may also be posted to Level 27, 175 Liverpool Street, Sydney NSW 2000 (marked to the attention of one of the above persons).

Where it is not possible or appropriate to report suspicion of misconduct to any of the above persons, reports can be made to an auditor or regulatory bodies.

Whistleblower disclosures can also be made to:

- a legal practitioner, where the disclosure is for the purpose of obtaining legal advice or legal representation in relation to the making of a disclosure; and
- ASIC, APRA or other prescribed Commonwealth bodies.

The law also protects whistleblower disclosures made to a journalist or parliamentarian in “emergency” and “public interest” situations. Essentially these provide escalation mechanisms in circumstances where a person has previously made a disclosure to ASIC, APRA or another Commonwealth prescribed body and certain requirements are satisfied. A discloser should contact an independent legal adviser before making a public interest disclosure or emergency disclosure.

An emergency disclosure is the disclosure of information to a journalist or parliamentarian, where:

- the discloser has previously made a disclosure of the information to ASIC, APRA or another Commonwealth body prescribed by regulation;
- the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- before making the emergency disclosure, the discloser has given written notice to the body to whom the disclosure was made that:

- includes sufficient information to identify the previous disclosure; and
- states that the discloser intends to make an emergency disclosure; and
- the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

A public interest disclosure can be made to a journalist or parliamentarian where:

- at least 90 days have passed since the discloser made the disclosure to ASIC, APRA or another Commonwealth body prescribed by regulation;
- the discloser has reasonable grounds to believe that no action is being, or has been taken, in relation to their disclosure;
- the discloser has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
- before making the public interest disclosure, the discloser has given written notice to the body to whom the previous disclosure was made that:
 - includes sufficient information to identify the previous disclosure; and
 - states that the discloser intends to make a public interest disclosure.

NSW LRS would like to address misconduct as early as possible and encourage disclosures to be made internally where possible. This approach is intended to help build confidence and trust in our whistleblower policy, processes and procedures.

Investigation process

The individual who receives the report will appoint an appropriate individual to investigate the report.

The individual who leads the investigation will be referred to as the Whistleblower Protection Officer (**WPO**) and should be either:

- an experienced internal investigator who is independent of the area where the misconduct is alleged to have occurred, or
- a qualified external investigator independent of NSW LRS where considered necessary.

While each investigation will vary depending on the nature of the disclosure, all investigations will be conducted as quickly and efficiently as the circumstances permit.

The WPO is responsible for keeping the whistleblower informed of the progress and outcomes of the inquiry/investigation subject to considerations of privacy of those against whom the allegations have been made. The frequency and timing of these updates may vary depending on the nature of the disclosure.

The method for documenting and reporting the findings will depend on the nature of the

disclosure. There may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

NSW LRS will ensure fair treatment of employees, contractors or officers who are mentioned in a disclosure that qualifies for protection, including those that are the subject of the disclosure. For example:

- disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
- each disclosure will be assessed and may be the subject of an investigation;
- the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported;
- when an investigation needs to be undertaken, the process will be objective, fair and independent;
- an employee, contractor or officer who is the subject of a disclosure will be advised about the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness and prior to any actions being taken - for example, if the disclosure will be the subject of an investigation; and
- an employee, contractor or officer who is the subject of a disclosure may contact the Employee Assistance Program (EAP) which is a professional, confidential counselling and advice service paid for by NSW LRS.

No action will be taken against individuals who are implicated in a report until an investigation is complete and the investigator has determined whether any allegations are substantiated. NSW LRS may temporarily stand down on full pay an employee, contractor or officer who is implicated in a report during the course of the investigation. If the investigator finds the allegations to be unsubstantiated, the employee, contractor or officer will be immediately reinstated to full duties.

Whistleblower protection

The responsibilities of the WPO include the assurance that action taken in response to the inquiry is appropriate to the circumstances and retaliatory action will not be taken against the person who made the disclosure.

The WPO has direct access to independent advisers as required, and a direct line of reporting to the relevant people as may be required to satisfy the objectives of this policy.

NSW LRS will endeavour to ensure the whistleblower's identity is protected from disclosure. It is illegal for a person to identify a discloser, or disclose information that is likely to lead to the identification of the discloser outside of the exceptions detailed below. The following unauthorised disclosures will be regarded as a disciplinary matter and misconduct under this policy, and will be dealt with in accordance with the Code of Conduct:

- unauthorised disclosure of the identity of a person who has made a report of misconduct;
or

- unauthorised disclosure of information from which the identity of the whistleblower could be inferred.

Measures and mechanisms that may be used to protect the confidentiality of a discloser's identity include:

- all personal information or reference to the discloser witnessing an event will be redacted;
- the discloser will be referred to in 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 qualified staff.

Secure record-keeping and information sharing processes that will be used include:

- all paper and electronic documents and other materials relating to disclosures will be stored securely with limited access rights;
- access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure;
- only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser;
- communications and documents relating to the investigation of a disclosure will not to be sent to an email address or to a printer that can be accessed by other staff; and
- each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

There are certain circumstances where a whistleblower's identity may be disclosed:

- the whistleblower consents to the disclosure;
- the disclosure is required by law;
- the disclosure is necessary to prevent or lessen a serious threat to a person's health or safety;
- where NSW LRS provides information to:
 - ASIC, APRA, a member of the Australian Federal Police;
 - a legal practitioner (for the purpose of obtaining legal advice or legal representation about the whistleblower provisions in the Corporations Act); or
- the disclosure is necessary to protect or enforce NSW LRS' legal rights or interests or defend itself against any claims.

A whistleblower can lodge a complaint about a breach of confidentiality to one of those persons whose details are listed above. They may also lodge a complaint with a regulator such as ASIC, APRA or the ATO, for investigation.

If the whistleblower has reasonable grounds to suspect misconduct covered by this policy, and the whistleblower is not involved in the misconduct, the whistleblower must not be disadvantaged because they made a report. This means that it will be a breach of this policy if, because the whistleblower genuinely raised a concern, they suffer:

- dismissal;
- demotion or reduced career advancement;
- any form of harassment or victimization;
- discrimination; or
- current or future bias.

Example of actions that are not detrimental conduct include managing a discloser's unsatisfactory work performance if the action is in line with the NSW LRS performance management framework.

Depending on your circumstances, some examples of measures we may adopt to support you and protect you from detrimental acts or omissions are:

- making support services (such as counselling or other professional services) available to you;
- assisting you with strategies to help minimise and manage stress, time or performance impact, or other challenges resulting from the disclosure; or
- modifying your workplace or the way you perform work duties.

If you believe you have suffered detriment, you may seek legal advice or contact regulatory bodies such as ASIC, APRA or the ATO.

A discloser can seek compensation and other remedies through the courts if:

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

In addition, a discloser is protected from civil, criminal and administrative liability (including disciplinary action), however such immunity is not granted for any misconduct a discloser has engaged in that is revealed in their disclosure.

Personal work-related grievances are excluded from the categories of protected disclosures, unless the information also relates to misconduct or improper affairs in the sense described above (see 'Disclosable Matters'), or detriment the whistleblower has suffered as a result of an earlier protected disclosure.

Examples of personal work-related grievances include:

- an interpersonal conflict between the whistleblower and another employee, contractor or officer;
- a decision relating to the engagement, transfer or promotion of the whistleblower;
- a decision relating to the terms and conditions of engagement of the whistleblower; and
- a decision to suspend or terminate the engagement of the whistleblower, or otherwise to discipline the whistleblower.

Employees can internally raise personal work-related grievances and other types of issues or concerns that are not covered by this policy by contacting their manager or a member of the Executive Leadership Team.

Roles and responsibilities

The Board is responsible for:

- ensuring that any whistleblower complaints are taken seriously; and
- ensuring the mechanisms are effective in ensuring a culture of transparency.

The CEO is responsible for:

- supporting the CPO and General Counsel in effective implementation of the policy;
- ensuring that employees, contractors and officers are aware of the policy and the circumstances when it should be used; and
- ensuring that there is no retribution towards a whistleblower.

Any whistleblower is responsible for:

- having reasonable grounds for believing the disclosure is a reportable misconduct; and
- providing information to assist any inquiry/investigation of the misconduct disclosed.

Access to policies

A copy of this policy can be found on the Intranet and on the NSW LRS website. Other relevant policies include the Code of Conduct.