



Australian Office

# WHISTLEBLOWER

## protection policy

December 2019

St John Ambulance Australia Ltd  
Version 2.0; NOPOL: 1.7

**Making first aid a part of everybody's life.**

# VERSION CONTROL

VERSION	DATE	TITLE	APPROVED BY	DETAILS
Version 1.0	22.10.2015	Whistleblowing policy	Peter LeCornu, National CEO	New policy.
Version 1.1	03.07.2019	Whistleblowing policy	N/A	Minor updates to amend terminology to reflect change from Incorporated Association to Company Limited by Guarantee.
Version 2.0	16.12.2019	Whistleblower protection policy	Len Fiori, Australian CEO (interim approval)	Amended to reflect changes to whistleblower legislation that came into effect in June 2019; and in line with <i>Australian Securities and Investments Commission (ASIC) Regulatory Guide 270</i> , dated November 2019.

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# GLOSSARY

<b>TERM</b>	<b>MEANING IN THIS POLICY</b>
Detriment	The cause of damage or harm to a person, organisation or property.
Detrimental act or conduct	Damaging or harmful action to a person.
Disclose	Make (secret or new information) known.
Disclosure	The action of making new or secret information known.
Omission	Moral or legal failure.
Reasonable grounds	Means that the facts and matters relied on are sufficiently strong to warrant that a prudent person believes that the facts and matters are true.

## 1. INTRODUCTION

St John Ambulance Australia Limited (St John) is committed to upholding the highest standards of ethical conduct, integrity, governance and fairness in the workplace. We recognise the importance of creating a supportive workplace where concerns, complaints, disclosures or allegations can be raised without fear of retribution, reprisal, victimisation or detrimental acts or omissions.

The *Whistleblower protection policy* is an important tool for helping the Australian Office to identify wrongdoing and provide whistleblowers with the confidence to speak up knowing that they can do so safely. The Australian Office strongly encourages any person aware of wrongdoing, or potential wrongdoing, to speak up. St John takes allegations of wrongdoing seriously and every disclosure made will be assessed and may be investigated.

In most cases, disclosures can be raised and addressed informally, such as by having discussions with a Line Manager. However, some matters are more serious and require a formal process. The Australian Office has several formal and informal ways in which disclosures can be made (see Clause 6 on [page 6](#)).

St John will not tolerate any person being discouraged from speaking up about wrongdoing, or any threat of detriment because of making a disclosure. Any breach of this Policy by an employee or volunteer may result in counselling and/or disciplinary action, or in serious matters, termination or referral to the appropriate authority.

## 2. PURPOSE

The purpose of this Policy is to:

- encourage people to disclose serious matters or wrongdoing
- prevent wrongdoing
- establish a transparent method for handling disclosures
- ensure that disclosures can be made safely and securely
- detail the protections and support available to whistleblowers.

## 3. RESPONSIBILITIES

1. All employees, officers, contractors, volunteers or any other person having business with St John are subject to this Policy.

2. The Priory Board of Directors (Board) is responsible for:
  - this Policy
  - ensuring that any trends, themes and/or emerging risks highlighted by disclosures made under this Policy are addressed and mitigated by the Australian Office
  - approving all updates to this Policy and its processes and procedures.
3. The Manager—Policy and Community is responsible for:
  - providing accurate and confidential advice about this Policy and how a disclosure may be handled
  - updates to this Policy.
4. The Whistleblowing Contact Officer is responsible for receiving and assessing disclosures, advising relevant stakeholders and referral to investigation (as required).

## 4. WHAT IS WHISTLEBLOWING?

‘Whistleblowing’ occurs when a person discloses any serious concern about actual or suspected wrongdoing in an organisation. For example, a person can make a report when they discover information they believe is evidence of serious malpractice, misconduct or illegal activity.<sup>1,2,3</sup>

### 4.1 WHO ARE WHISTLEBLOWERS?

A whistleblower could be anyone. For example, they may:

- be an officer (e.g. Board Director), employee or volunteer (current or former)
- contractor, consultant or supplier of goods
- business partner
- service provider
- an associate (e.g. a person or organisation that St John is connected with)
- a person external to the Australian Office (but who has, or has had, a direct relationship with St John). For example, a relative, dependant or spouse of an individual who is (or has been) an officer or employee of the Australian Office.<sup>4</sup>

In Australia, various federal laws protect whistleblowers from negative treatment (known as ‘detrimental acts’ or ‘omissions’) because of their disclosure. States and territories also have their own whistleblowing policies and processes that need to be complied with.

## 4.2 WHY IS THIS POLICY IMPORTANT?

Having a whistleblowing policy in place can help an organisation:

- be more accountable and transparent
- be more effective in its fiscal management
- be a safer workplace (e.g. through eliminating unsafe work practices)
- be compliant with laws
- increase the perception that the organisation is taking its governance obligations seriously
- assist in the professional integrity of employees, volunteers, officers and others
- help whistleblowers to feel safe making a disclosure.<sup>5</sup>

## 4.3 WHAT CAN BE DISCLOSED?

A disclosure can be made when a person believes they have 'reasonable grounds to suspect' wrongdoing.<sup>4</sup> 'Reasonable grounds to suspect':

- means that the individual's suspicion is based on objective facts and matters, and
- ensures that the discloser's personal reasons and opinions does not drive their decision to disclose.<sup>4</sup>

A disclosure can include (but is not limited to) 'misconduct' or an 'improper state of affairs'.<sup>4</sup>

Examples of misconduct include conduct that:

- is fraudulent or corrupt
- is illegal (e.g. theft, violence [including threats], illicit drug sale or use, property damage)
- constitutes unethical behaviour (e.g. dishonesty, wilfully breaching St John policies and procedures, altering company records or unsafe work practices)
- is bribery
- is potentially damaging to St John or its interests (e.g. substantially wasting resources, financially-damaging conduct, conduct that may damage St John Ambulance's reputation or other interests)
- is negligent
- breaches trust or duty
- indicates a significant risk to the public or the environment
- may cause financial loss (e.g. fraud, money laundering, misappropriation of funds)
- threatens a discloser or suspected discloser
- breaches regulations or laws.<sup>3,4</sup>

An 'improper state of affairs' can include systemic issues (e.g. denial of access to complaints

resolution procedures or a culture of standover tactics by managers) that a regulator should know about. These issues can affect an organisation's business behaviour and ability to perform its function properly, or include practices that can harm consumers.<sup>4</sup>

It is important to note that the *Corporations Act* does not provide protections for disclosures that do not relate to 'disclosable matters'.<sup>4</sup> However, even if a matter doesn't qualify for protection, it should be reported—we want to hear about any matter that may jeopardise our organisation.

## 4.4 WHO CAN A WHISTLEBLOWER DISCLOSE TO?

In order to qualify for protection under legislation, whistleblowers must disclose directly to an 'eligible recipient', a legal practitioner or regulatory body such as the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO), Australian Federal Police (AFP) or other Commonwealth body prescribed by regulation.<sup>4</sup>

Eligible recipients include:

- an officer (e.g. Board director or company secretary) or senior manager\* (e.g. Chief Executive Officer or other senior executive)
- the (external) St John auditor
- a person authorised by St John to receive disclosures that may qualify for protection.<sup>4</sup>

See Clause 6 on [page 6](#) for a list of people or organisations you can contact.

## 4.5 DO WHISTLEBLOWERS HAVE TO PROVE THEIR CASE?

No, a whistleblower does not need to prove their allegations or suspicions.<sup>4</sup> You only need to have 'Reasonable grounds' to suspect that wrongdoing has occurred. The more information you are able to provide however, increases the chance of substantiating (or supporting) your claim(s).<sup>4</sup>

## 4.6 WHISTLEBLOWING VERSUS GRIEVANCES

'Whistleblowing' generally relates to reporting on matters where the outcome of an investigation does not personally affect the whistleblower. The whistleblower reports the matter so that others can address the concern. There is no need for the

\* A senior manager is someone who:

- makes or takes part in making decisions that affect the whole or a substantial part of an organisation's business and operations
- has the capacity to significantly affect the organisation's financial standing.

whistleblower to prove their case, the onus is on the organisation to do so.<sup>5</sup>

Conversely, 'personal work-related grievances' (grievances) are usually about matters that relate to a person directly. For example, a breach of employment conditions, a dispute between two employees, or experiencing workplace bullying. Here, the onus is on the individual to prove their case.<sup>5</sup>

Grievances tend not to have significant implications for the organisation and (generally) does not relate to conduct that constitutes 'disclosable conduct' under the *Corporations Act*.<sup>4</sup> Individuals (generally) do not qualify for protection under the *Corporations Act* for grievances.<sup>4</sup> The exception to this is where:

- the matter relates to actual detriment or threat of detriment to the discloser
- the disclosure includes information about misconduct, or
- the disclosure includes information about misconduct *accompanied by* a personal work-related grievance
- St John has:
  - ➔ breached employment or other laws punishable by imprisonment of a person for 12 months or more
  - ➔ engaged in conduct that represents a danger to the public
  - ➔ behaved in an unacceptable or improper way beyond the discloser's personal circumstances
- the discloser seeks legal advice or representation about the operation of whistleblower protections under the *Corporations Act*.<sup>4</sup>

If you have a grievance, refer to the Australian Office *Grievances and Dispute Resolution Policy* (NOPOL: 7.10).

#### 4.7 DELIBERATE FALSE REPORTING

Disclosures must be made in good faith and the discloser must suspect, on reasonable grounds, that the information relating to the disclosure is serious in nature and reportable.<sup>4</sup> Sometimes, a person will have some information, but not all of the details or facts. This is okay and should be reported anyway.

Disclosers must not, however, make a report that they know to be deliberately untrue, baseless, malicious, vexatious, or motivated by revenge,

personal gain, or for harm to occur to the reputation of another individual or St John.<sup>4</sup>

St John employees and volunteers who make a false disclosure may be subject to counselling and disciplinary procedures, termination, or for serious offences, legal action and/or referral to the relevant authorities. Individuals external to St John who make a deliberate false report may be subject to legal action and/or referred to the relevant authority. Deliberate false reporting will not result in whistleblower protections under the *Corporations Act*.

#### 4.8 WHAT IF A REPORT IS MADE ABOUT ME?

If you have been accused of wrongdoing (i.e. you are the subject of a disclosure), you have the right to know that you are a subject of a disclosure and the nature of the complaint/allegation.<sup>4</sup> When this information is provided to you is dependent on the nature of the investigation. This will ensure the integrity of the investigation, and that the principles of natural justice and procedural fairness are followed. It is your right to be informed about the investigation before any adverse findings or any action is taken against you.<sup>4</sup> You also have the right to seek legal representation at any time.<sup>4</sup>

#### 4.9 WHAT THIS POLICY DOES NOT DO

This policy is not intended to replace normal communication channels between management and employees and volunteers, such as addressing any questions, concerns, suggestions or complaints. In the first instance, employees and volunteers should approach their Line Manager to raise questions, concerns, suggestions or complaints. Serious matters or matters that are not resolved in a satisfactory way, should be escalated through appropriate management channels.

St John cannot provide immunity from civil penalties or criminal prosecution.

## 5. WHISTLEBLOWER PROTECTIONS AND SUPPORT

### 5.1 PROTECTING YOU FROM DETRIMENT

St John will not tolerate any form of detrimental act or omission against any person that has made a disclosure, or who is believed to have made or is considering making a disclosure. This conduct is

considered serious misconduct and will result in disciplinary action and/or be referred to the relevant authorities.

Individuals who make a disclosure in good faith are protected under the *Corporations Act* from any conduct that causes them detriment.<sup>4</sup> This includes threats to cause detriment to a discloser (or any other person).<sup>4</sup> A discloser (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out to invoke protection under the *Corporations Act*.<sup>4</sup>

Examples of detrimental conduct as a result of a disclosure includes:

- bullying, harassment or discrimination
- intimidation
- bias
- harm or injury to a person
- demotion, termination or dismissal
- alteration to an employee's position or duties to their disadvantage
- threats (express or implied, conditional or unconditional)
- damage to property, reputation, business or financial position or any other damage to a person.<sup>4</sup>

Examples of actions that are not considered detrimental may include:

- administrative actions designed to protect a discloser from detriment (e.g. moving the discloser to a different work area to prevent them from experiencing detriment)
- managing the discloser's unsatisfactory work performance (in line with the Australian Office *Performance Appraisal and Management Policy*).<sup>4</sup>

### 5.1.1 HOW ST JOHN PROTECTS WHISTLEBLOWERS

In order to protect a discloser, or a person subject to a disclosure, from detrimental acts or omissions, the Australian Office will:

- undertake a risk assessment of each disclosure made, for the risk of detriment against the discloser (and others) or persons subject to the disclosure. For example, risk around isolation of the discloser in the workplace, bullying or potential conflict that may result from a disclosure

- ensure that the discloser and any person who is the subject of a disclosure are made aware of the support services available to them (see Clause 5.3 on [page 6](#))
- take any reasonable action designed to protect the discloser or person subject to a disclosure from risk of detriment (e.g. moving workstations, working from home during the investigation)
- provide administrative modifications (e.g. taking extended leave)
- assist the discloser or person subject to a disclosure in retraining or identifying new career options
- ensure that all personnel involved in the management of the disclosure are aware of their responsibilities to keep the confidentiality of all parties
- administer disciplinary action to any person who has participated in detrimental acts or omissions towards another person.

If you have suffered or have been threatened with detrimental acts or omissions, you can make a complaint. In some cases, the treatment you have been subject to may be illegal under whistleblower protection laws. People victimising whistleblowers may be subject to substantial monetary fines and imprisonment. All complaints made to St John will be investigated as a separate matter by a staff member who is not directly involved in the disclosure or investigation or external investigator. You can also seek legal advice or contact regulatory bodies such as ASIC, AFP or the ATO if you believe you have suffered detriment because of a disclosure.

Any employee, volunteer or officer who is found to have subjected a discloser to detrimental action may be found guilty of an offence that is subject to prosecution under legislation.

For more information about protections under the *Corporations Act*, see ['Appendix 1'](#)

### 5.2 PROTECTING YOUR IDENTITY

If you make a disclosure, St John has a legal obligation to protect the confidentiality of your identity.<sup>4</sup> Australian laws state that St John cannot disclose the identity of a discloser or any information that is likely to lead to the identification of the discloser.<sup>4</sup> St John will take all reasonable steps to protect the identity (confidentiality) of disclosers and any person who is the subject

of a disclosure, except in circumstances where disclosure of identity is required by law.<sup>4</sup> However, there are exceptions to this under the *Corporations Act*. For example:

- where the disclosure has been made to ASIC, ATO, or the AFP (within the meaning of the *Australian Federal Police Act 1979*)
- where the disclosure has been made to a legal practitioner (for the purpose of obtaining legal advice or legal representation about the whistleblower provisions of the *Corporations Act*)
- where the disclosure has been made to a person or body prescribed by regulations
- the discloser has consented.<sup>4</sup>

St John can legally reveal information contained in a disclosure without the discloser's consent where:

- the information does not include the discloser's identity
- St John has taken all reasonable steps to reduce the risk of the discloser being identified (e.g. redacting personal information)
- it is reasonably necessary for investigating the issues raised in the disclosure.<sup>4</sup>

However, it is important to know that, in practice, people who are privy to the information of a disclosure may be able to guess the identity of a discloser. For example, where:

- you have previously mentioned to others that you are considering making a disclosure
- a very small number of people have access to the information that relates to the disclosure
- the disclosure relates to information that you have been told privately and in confidence.<sup>4</sup>

If you believe that your confidentiality has been breached, you can make a complaint in line with our *Privacy Policy* (NOPOL: 6.1). You can contact the National Privacy Officer at [privacy@stjohn.org.au](mailto:privacy@stjohn.org.au) or via post at:

National Privacy Officer  
St John Ambulance Australia  
PO Box 292  
Deakin West ACT 2600

You can also lodge a complaint with a regulator, such as ASIC, AFP or the ATO.

### 5.2.1 Speaking up anonymously

The Australian Office acknowledges that individuals may feel threatened, intimidated or concerned about speaking up. Therefore, you

can make an anonymous disclosure. Anonymous disclosures may still qualify for protection under the *Corporations Act* and may still be investigated.<sup>4</sup>

It is important to know however, that anonymous disclosures can be more challenging for an organisation to investigate—especially where the discloser is uncontactable following the disclosure. Ideally, the discloser will remain in contact with the investigating body during the life of the investigation or disclosure, to ensure that follow-up questions can be asked, or feedback sought.

There are things that you and St John can do to help you protect your identity.

#### Things you can do

- Adopt a pseudonym (e.g. a fictitious name) for the purpose of your disclosure.
- Know that you have the right to refuse to answer any question during a disclosure or investigation that you feel could reveal your identity.
- Provide as much information as you can when you make the disclosure.

#### Things St John can do

- Where a disclosure is from an email address that the individual's identity cannot be determined or via post, and the discloser does not identify themselves in the email or letter, St John will treat the disclosure as an anonymous disclosure.
- Where information contained in the disclosure must be shared with other parties, St John can redact personal or identifying information or reference to the discloser.
- St John will refer to the discloser in a gender-neutral way.
- Where possible, St John will contact the discloser to help identify any aspects of the disclosure that they believe may inadvertently identify them.
- Disclosures will be managed by appropriate staff members or qualified external investigators.

At some point during an investigation, it may be necessary to make known the substance of the disclosure to the person who is alleged to have done the wrong thing. Although confidentiality will be maintained by St John, it is possible that the identity of the whistleblower may be obvious to the person who is the subject of the disclosure (see Clause 5.2 on [page 4](#) for some reasons for why this can happen). St John will take all reasonable steps to ensure that whistleblower is protected from detrimental acts or omissions should this occur.

### 5.3 SUPPORT AVAILABLE TO YOU

The Australian Office Employee Assistance Program, Peer Support Program and chaplaincy services are available to give support to any individual who makes a disclosure or is the subject of a disclosure. Details for how to access support are contained in the *Employee and Volunteer Welfare Policy* (NOPOL: 7.6).

Arrangements to support a discloser who is external to the Australian Office can be made on request.

## 6. HOW TO MAKE A DISCLOSURE

The Australian Office offers both internal and external pathways where disclosures can be made confidentially, anonymously (if the discloser wishes), securely and outside of business hours.

### 6.1 WHO TO MAKE DISCLOSURE TO

#### 1. Directly to St John

In the first instance, St John encourages whistleblowers to raise any matter with the Australian Office directly.

Individuals can make a disclosure by contacting the Whistleblowing Contact Officer. The Whistleblowing Contact Officer is a senior manager appointed by the Australian CEO and is therefore an 'eligible recipient' under the Corporations Act. This can be done via phone, email or mail.

T: 02 6239 9201

E: [policy@stjohn.org.au](mailto:policy@stjohn.org.au)

M: PO Box 292  
Deakin West ACT 2600

#### 2. Whistleblowing hotline

As at 1 January 2020, St John has engaged a whistleblowing hotline provider, Stoline, to handle disclosures. This is a confidential, safe and non-threatening service that is external to St John and available 24 hours a day, seven days a week.

#### Stoline

Telephone: 1300 30 45 50 (in Australia)

Web: [stjohnambulance.stolinereport.com](http://stjohnambulance.stolinereport.com)

Email: [stjohnambulance@stoline.com.au](mailto:stjohnambulance@stoline.com.au)

Fax: St John Ambulance (Australian Office),  
C/O Stoline +61 3 9882 4480

Post:

St John Ambulance (Australian Office)  
C/O Stoline  
Locked Bag 8  
Hawthorn VIC 3122  
Australia

iPhone/Android app: Smart phone App (free download from the iTunes Store and Google Play).

#### 3. To the appropriate regulatory authority

An individual can make a report to the following appropriate regulatory authority:

- Australian Securities and Investments Commission
- Australian Taxation Office
- Australian Federal Police.

### 6.2 WHAT TO INCLUDE IN A DISCLOSURE?

You are encouraged to provide as much detail about the matter as possible, including:

- dates, times and locations of alleged incidents
- names of people involved
- names of witnesses
- details of the potential misconduct
- any other supporting evidence.

## 7. INVESTIGATION

Every disclosure made (including those that qualify for protection) will be properly assessed and, if appropriate, referred to investigation.

The aim of an investigation is to gather evidence and determine if there is enough evidence to substantiate (support) or refute the disclosure(s) reported. For a disclosure to be investigated, there must be enough evidence to form reasonable grounds for an investigation to occur. Therefore, it is important to provide as much detail as possible when making a disclosure.

All investigations will be confidential, objective, fair and independent. Investigations will also occur promptly, as far as is reasonably possible.

If St John believes the investigation of a disclosure is beyond the Australian Office's internal ability or objectivity and independence are not possible, the matter will be referred to an external investigator.

If an investigation is started, St John will keep the discloser informed of the investigation's progress and provide a summary of the findings at its conclusion, subject to confidentiality considerations. It's important to know that it may not always be appropriate for St John to provide

the discloser, or the person who is the subject of a disclosure, all the information relating to an assessment or investigation.

See 'Appendix 2' for the Australian Office procedure for managing investigations.

### 7.1 WHAT HAPPENS AFTER AN INVESTIGATION?

The results of any investigation are recorded in a formal, confidential report that has recommendations for actions to be taken.

Where a disclosure is substantiated, appropriate actions will be taken by St John, including against any person who has done the wrong thing. If a disclosure is refuted, an explanation will be provided to the discloser and other relevant parties (subject to relevant confidentiality considerations).

If it is found that a breach of law, a St John Code of Conduct or other policy has occurred, appropriate disciplinary action and/or legal action may be taken. This can include, for example, suspension, termination or referral to an external authority.

The outcome of any report and action taken by St John will be reported to the Board and the Finance, Audit and Risk Committee.

### 7.2 CONFIDENTIALITY DURING AN INVESTIGATION

St John cannot reveal information regarding a disclosure as part of its investigation process unless:

- (a) the information does not reveal the discloser's identity
- (b) St John redacts identifying information relating to the discloser's identity or any other information that is likely to lead to the identification of the discloser (e.g. name, role and other identifying details)
- (c) it is reasonably necessary for investigating the issues raised in the disclosure.<sup>4</sup>

Any person involved in the management and investigation of the disclosure will be reminded of their confidentiality requirements, including that unauthorised disclosure of identity may be a criminal offence.

## 8. RECORD KEEPING AND PERSONNEL FILES

Records will be kept securely with access only granted to authorised persons in line with the Australian Office's *Information Management Policy* (NOPOL: 6.6). Each step of the disclosure, assessment and investigation process will be documented and stored securely.

Any breach of confidentiality relating to a disclosure will be taken seriously. Unauthorised disclosures may be in breach of the *Privacy Act 1988*, the *Australian Privacy Principles* and other Australian laws and may have legal ramifications. Unauthorised disclosure of, or access to, information relating to a disclosure, including the identity of the whistleblower (including where identity can be inferred), will be dealt with in accordance with the Australian Office's *Privacy Policy* (NOPOL: 6.1) or *Data Breach Policy* (NOPOL: 6.5), as appropriate.

St John will take all reasonable steps to store all records relating to a disclosure securely. Access to records will be limited to those directly involved in the management and investigation of the disclosure.

## 9. AVAILABILITY OF THIS POLICY AND TRAINING

This Policy will be made available to all Australian Office employees, volunteers and officers. St John will seek to ensure that employees, volunteers and officers are made aware of, and understand, this Policy. The Policy will be circulated to employees, volunteers and officers via email, staff briefing sessions and inclusion of information on whistleblowing in the Australian Office's *Induction Handbook*. Employees, volunteers and officers will be advised of any updates to this Policy or changes to whistleblowing legislation in a timely manner.

A copy of this Policy will be made available to the public via the national website ([www.stjohn.org.au](http://www.stjohn.org.au)).

## 10. FURTHER INFORMATION

You can find further information about whistleblowing at:

- [Australian Securities and Investments Commission](#)
- [Australian Taxation Office](#)
- [Australian Federal Police](#).

## 11. REVIEW

This policy will be reviewed bi-annually, or sooner subject to legislative changes. St John may amend this Policy at any other time at its discretion.

## 12. RELATED POLICIES

Anti-bullying, harassment and discrimination policy (NOPOL: 1.4)

Anti-Fraud, bribery and corruption policy (NOPOL:5.2)

Australian Office child safety procedures (NOPOL: 3.2)

Child safety code of conduct (NOPOL: 1.9)

Child safety rules, standards and guidelines (NOPOL: 3.1)

Code of conduct (NOPLO: 1.1)

Counter terrorism policy (NOPOL: 5.3)

Counselling and disciplinary policy (NOPOL:7.8)

Donations policy (4.8)

Employee and volunteer welfare policy (NOPOL: 7.6)

Grievances and dispute resolution policy (NOPOL: 7.10)

Performance appraisal and management policy (NOPOL: 7.9)

Privacy policy (NOPOL:6.1)

Risk management guidelines (NOPOL:4.9)

Termination and redundancy policy (NOPOL:7.5)

Use of St John assets and resources policy (NOPOL: 4.3)

## 13. RELATED LEGISLATION AND REGULATIONS

*A New Tax System (Goods and Services Tax) Act 1999 (Cth)*

*Anti-money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*

*Corporations Act 2001 (Cth)*

*Crimes (Currency Act) 1981 (Cth)*

*Crimes (Overseas) Act 1964 (Cth)*

*Criminal Code Act 1995 (Cth)*

*Customs Act 1901 (Cth)*

*Fringe Benefits Tax Assessment Act 1986 (Cth)*

*Income Tax Assessment Act 1997 (Cth)*

*Privacy Act 1988 (Cth)*

*Taxation Administration Act 1953 (Cth)*

*Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)*



# APPENDICES

**Making first aid a part of everybody's life.**

# Appendix 1

## LEGISLATIVE PROTECTIONS

Under the *Corporations Act 2001* and the *Taxation Administration Act 1953* (as amended), and other applicable laws, whistleblowers who make a disclosure qualify for protection when they:

- make a disclosure that relates to a ‘disclosable matter’ directly to an eligible recipient or to the ASIC, AFP, ATO or other prescribed Commonwealth body
- have made a disclosure to a legal practitioner for the purposes of obtaining legal advice or representation about the operation of, or provisions in, the *Corporations Act*, *Taxation Administration Act* and other relevant laws
- have made an ‘emergency disclosure’ or ‘public interest disclosure’ (see “*Public interest and emergency disclosures*”).<sup>4</sup>

If a disclosure is made in good faith, the whistleblower (or any other employee or person) has protection regarding compensation and other remedies. That is, the individual has the right to seek compensation or other remedies through the court:

- if they suffer loss, damage or injury because of a disclosure or
- because the Australian Office failed to take reasonable precautions and exercise due diligence to prevent detrimental conduct.<sup>4</sup>

If a disclosure is made in good faith, a whistleblower is also protected from:

- civil liability (e.g. any action against them for a breach of, say, an employment contract, duty of confidentiality or other contractual obligation)
- criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or use of the disclosure against the discloser in a prosecution [other than for making a false disclosure])
- administrative liability (e.g. disciplinary action for making a disclosure such as in the workplace).<sup>4</sup>

A whistleblower, under the *Corporations Act*, can still qualify for protection even if their disclosure turns out to be incorrect.<sup>4</sup> However, it is important to note that protections do not grant immunity where the discloser has engaged in misconduct that is revealed through the course of their disclosure.<sup>4</sup>

It is suggested that a discloser seek independent legal advice in relation to compensation and other remedies, and civil, criminal and administrative liability protections, as appropriate.<sup>4</sup>

## PUBLIC INTEREST AND EMERGENCY DISCLOSURES

Under the *Corporations Act*, an individual can make a disclosure to a journalist or parliamentarian and qualify for protection under certain circumstances.<sup>4</sup>

A ‘public interest disclosure’ is one that is made to a journalist or parliamentarian where:

- at least 90 days have passed since the discloser made the disclosure to ASIC, ATO, AFP or another Commonwealth body prescribed by regulation
- the discloser reasonably believes that action regarding the disclosure is not being, or has not been, taken in relation to their disclosure
- the discloser believes, on reasonable grounds, that making a disclosure is in the public interest
- before making the disclosure, the discloser has given written notice to the body to which the original disclosure was made that sufficiently identifies the information of the previous disclosure, and advises that the discloser intends to make a public interest disclosure.<sup>4</sup>

An ‘emergency disclosure’ is one that is made to a journalist or parliamentarian where:

- the discloser has previously made the disclosure to ASIC, ATO, AFP 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 disclosure, the discloser has given written notice to body to which the original disclosure was made that sufficiently identifies the information of the previous disclosure, and advises that the discloser intends to make a public interest disclosure
- the extent of the information in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.<sup>4</sup>

In making a public interest or emergency disclosure, disclosers should seek independent legal advice prior to making a public interest or emergency disclosure.<sup>4</sup>

# Appendix 2

## INVESTIGATION PROCESS

### 1. RECEIVING A DISCLOSURE.

1.1. On receipt of a formal disclosure the Whistleblowing Contact Officer will:

(a) record the details of the disclosure in a confidential Whistleblowing Disclosure Register (located on the S: Drive). Details recorded will include:

- date and time of receipt of the disclosure
- name of the discloser (where provided) or if the disclosure is anonymous
- contact details for the discloser (where provided)
- the name(s) of any person who is the subject of the disclosure
- a brief summary of the complaint, allegation, suspicion
- the person the disclosure is referred to for investigation (e.g. internal or external investigator or regulator), including the date and time of the referral
- whether the matter qualifies for protection (in accordance with 1.2 below)
- the date and time the relevant recipient (e.g. appropriate person or manager of service area), has been advised of the disclosure (in accordance with 1.6 below)
- an approximate time frame for the investigation.

1.2 Upon receipt, the Whistleblowing Contact Officer will:

#### Assess

- Determine whether the disclosure qualifies for protection.
- Assess the urgency of the disclosure.

#### Classify

- Classify the disclosure into the relevant category based on the available evidence (e.g. financial management, improper conduct, unsafe work practices).
- Identify the most appropriate person to provide the disclosure to.

- Determine whether a formal, in-depth investigation is required and if so, whether the investigation should be internal or external (refer to clauses 1 and 3 below).
- Identify the nature of any technical, financial or legal or other specialist advice that may be required to support the investigation.

#### Act

- Provide details of the disclosure to the appropriate person in the organisation or service area, or refer the disclosure to an independent external investigator.

#### Record

- Document all aspects of the disclosure in line with 1.1 above.

1.3 Where it is unclear whether a disclosure qualifies for protection, the disclosure will be treated as qualifying for protection.

1.4 Where a disclosure is anonymous (and the discloser is not contactable and has not provided sufficient information for investigation), lack of information may hinder or prevent the Australian Office or the independent investigator's ability to undertake a thorough investigation. Investigation will proceed with the information available, where appropriate.

1.5 Where a discloser has provided their contact details, St John will acknowledge receipt of the disclosure within two (2) business days upon receipt (except where clause 1.4 is in effect). The acknowledgment will be recorded in the Whistleblowing Disclosure Register.

1.6 The Whistleblowing Contact Officer will assess the disclosure in accordance with the provisions of this Policy and refer the matter to the CEO, or where the CEO is the subject of the disclosure, the Board Chairperson, within two (2) business days of receiving the disclosure. This notification will be recorded in the Whistleblowing Disclosure Register.

### 2. INTERNAL INVESTIGATION

2.1 The investigation process will adhere to the following principles:

- confidentiality
- procedural fairness
- objectivity
- independence.

2.2 The investigation must be independent of the discloser, any individual who is the subject of a disclosure, and/or the work area or business unit to which a disclosure is in reference to.

2.3 The Whistleblowing Contact Officer will appoint an investigator independent to the service or business area of the Australian Office that the matter relates to within two (2) business days of receiving notice of the disclosure. A record of this appointment, including date and time, should be recorded in the *Whistleblowing Disclosure Register* in accordance with 1.1.

2.4 Where a disclosure relates to the Whistleblowing Contact Officer, the disclosure will be referred to the Australian CEO for management.

2.5 The aim of the investigation process is to gather evidence relating to the claim(s) made by the discloser. The evidence may substantiate (support) or refute claims made.

2.6 Investigators will have direct, unrestricted access to financial, legal and other organisational operational materials relevant to the investigation, plus witnesses, as required.

2.7 A broad review on the subject matter or the work area may be undertaken in lieu of a formal investigation or in the event of insufficient evidence (such as in the event of 1.4 above).

2.8 Where appropriate, the investigator (or their delegate) is responsible for formally notifying any person subject to the disclosure that a complaint or allegation has been made against them, including the nature of the disclosure (where doing so will not jeopardise the investigation).

2.9 The investigator is responsible for providing regular progress reports to stakeholders. For example, the discloser, any person subject to a disclosure, the CEO and/or Board Chair (where appropriate or where doing so will not jeopardise the investigation). This may occur at, for example, the commencement of the investigation, while the investigation is in progress and at the conclusion of the investigation. The investigator is responsible for determining the most

appropriate time to inform stakeholders about an investigation (e.g. in some circumstances, informing an individual at an early stage of their investigation may compromise the effectiveness of the investigation, such as when there may be concerns that information may be destroyed or the matter needs to be referred to a regulatory body).

2.10 The investigator is responsible for formally notifying all relevant parties of the outcome of an investigation.

2.11 The investigator will advise the person responsible for oversight of this policy (while preserving confidentiality) of the investigation findings so that continuous policy improvement may be facilitated.

2.12 The investigator is responsible for ensuring that the discloser and/or the person(s) subject of a disclosure receive appropriate and timely support.

2.13 The investigator is responsible for conducting a *risk assessment* regarding the potential for retaliatory action against any party to the disclosure (see "Appendix 3").

2.14 The investigator will take all reasonable steps to ensure that retaliatory action is not taken against the discloser or any person who is the subject of a disclosure.

### 3. APPOINTMENT OF AN EXTERNAL INVESTIGATOR

3.1 The appointment of an external investigator will depend on the nature of the wrongdoing or allegation. For example, for a financial matter, a forensic accountant may be the most appropriate appointment, or for a matter where St John has been defamed, a specialist defamation lawyer.

3.2 The steps described in clause 2 will be applied to external investigations.

3.3 The Australian Office is responsible for all costs relating to any external investigation commissioned.

### 4. INVESTIGATION FINDINGS

4.1 At the conclusion of an investigation, the investigator will produce a report. The report will be supplied to the CEO (except where the CEO is the subject of the disclosure), Board,

and Finance, Audit and Risk Committee, as applicable.

4.2 In producing a report, the investigator is to maintain confidentiality, including around the discloser's identity.

4.3 The report subject to 4.1 should detail:

- all processes, steps and actions undertaken from commencement to conclusion
- a detailed summary of the facts and matters relied on in forming the conclusion
- recommendations (including what information the discloser and any person who is the subject of an investigation should receive at the conclusion of the investigation. It is important to note, that there may be details relating to the investigation that may not be appropriate for the discloser to receive, and as such will not be disclosed to the discloser).

4.4 Possible outcomes of a disclosure include (but are not limited to):

- counselling and/or disciplinary action (including termination) against the accused following an investigation
- counselling and/or disciplinary action (including termination) against the whistleblower where allegations are found to be malicious, frivolous or otherwise made in bad faith
- no action where the investigation finds that the complaint, concern or allegation is unfounded
- changes in policies, procedures or processes
- referral to legal process, a regulatory body or the Australian Federal Police.

## 5. RIGHT TO APPEAL

5.1 Any party to an investigation has the right to appeal the outcome of the investigation.

5.2 Should a person wish to appeal the outcome of an investigation, they must lodge an appeal in writing within fourteen (14) business days from the date of the correspondence reporting the investigation outcome.

5.3 Although a party has the right to appeal the outcome of an investigation in accordance with 5.2 above, St John reserves the right to refuse an appeal if St John finds that the investigation

was conducted properly, new information is not available, or that new information would not change the findings of the investigation.

5.4 Nothing in this policy should prevent a discloser from lodging a complaint with ASIC, AFP or the ATO if they are not satisfied with the outcome of the investigation.

## 6. WHEN A DISCLOSURE RELATES TO A STATE OR TERRITORY ST JOHN ORGANISATION

6.1 Should the Australian Office receive a disclosure that relates to a state or territory St John organisation, the Whistleblowing Contact Officer will:

- (a) assess the disclosure to determine whether the matter should be handled by the state or territory St John organisation that is the subject of the disclosure
- (b) if the Whistleblowing Contact Officer believes that the state or territory St John organisation should handle the disclosure (in accordance with 6.1(a)), the disclosure will be forwarded to the State or Territory CEO, or where the State or Territory CEO is the subject of the disclosure, to the State or Territory Board Chair
- (c) where it is not deemed appropriate to provide the disclosure to the State or Territory St John organisation, the Whistleblowing Contact Officer will assess the disclosure to determine whether it should be handled by the Australian Office, the Priority Board or Finance, Audit and Risk Committee, external investigator or Government regulatory body
- (d) where 6.1(a) applies, apply clauses 2 and 3 of this Procedure in the management of the disclosure, as appropriate.

# Appendix 3

## RISK ASSESSMENT PROCESS

It is important for St John to assess the risk for detriment relating to a disclosure and put in place appropriate controls to ensure risks are identified. This section of the policy should be read in conjunction with the Australian Office *Risk Management Policy* (NOPOL: 4.9).

Staff involved in risk assessment will ensure that thorough, accurate and factual records of the risk assessment and control plans are kept.

### RISK IDENTIFICATION

It is important to assess whether any person may have motive to cause the discloser detriment. Information should be obtained from the discloser about:

- the risk of their identity becoming known or apparent during the investigation
- any person that they fear may cause them detriment
- any existing conflicts or problems in the workplace
- any existing threats to cause detriment.<sup>4</sup>

### RISK ANALYSIS AND EVALUATION

- Analyse and evaluate the likelihood of all risks identified.
- Evaluate the potential severity of the consequences of the risks occurring.

Refer to the *Risk Management Policy* for the framework.<sup>4</sup>

### RISK CONTROL

Develop and implement strategies to prevent or contain the risks (e.g. moving work areas).<sup>4</sup>

### RISK MONITORING

Monitor and reassess the risk of detriment throughout the disclosure and investigation process. It is important to note that the risk of detriment may increase or change throughout the process, and even following the completion of an investigation.<sup>4</sup>

# Notes

1. Standards Australia (2004). *Australian Standard: Whistleblower protection programs for entities*. Standards Australia: Sydney.
2. Australian Securities and Investments Commission. Whistleblower rights and protections (Information Sheet 238 issued 1 July 2019). Accessed November 2019.
3. Mission Australia (2013). Whistleblowing policy. Mission Australia: Sydney. Accessed 4 August 2014.
4. Australian Securities and Investments Commission. Whistleblower policies (Regulatory Guide 270); November 2019. AISC: Canberra. Retrieved on 16 November 2019 from <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-270-whistleblower-policies/>
5. Deloitte (n.d.). Whistleblowing policy. Deloitte, UK. Accessed August 2014.