WHISTLEBLOWER CASE OFFICER MANUAL

Internal use only

INTRODUCTION

There are three roles within the Whistleblower function at APRA:

Section 47C(1)

Whistleblower Manager

Responsible for:

- allocation of case officers;
- managing case officer caseload;
- approval of all peer regulator releases prior to delegate consideration;
- approval of all closure memos prior to delegate consideration;
- strategic priorites of the Whistlblower function;
- Whistleblower Policy and Procedure review and revision; and
- Whistleblower function performance against KPI's.

Whistleblower Coordinator

Responsible for:

- intake and inital review of all new matters;
- notifying Supervision of new Whisttleblower matters;
- setting up IM folders;
- assigning matter ID's;
- setting up Whistleblower Tracker entries;
- updating and maintaining the Whistleblower Tracker;
- monthly, quaterly, and annual reporting;
- liaison with divisional Buisness Managers;
- assisting case officers with novel or challenging matters;
- considering issues of legal professional privilege; and
- liaison with ASIC and other peer regulators.

Case Officers

Responsible for:

- day to day contact with the Supervision teams;
- attending Whistleblowers meetings;
- assisting Supervision with peer regulators releases;
- assisting Supervision to implement their strategy with due consideration of s 56 obligations and obligations under Whistleblower regime; and
- assisting Supervision with drafting closure memos.

KEY RESOURCES

- Whistleblower Policy
- Whistleblower Procedure
- Whistleblower APRANet Page
- Whistleblower Tracker
- Whistleblower Template Guide

KEY INFORMATION

Mailbox Access

- When you join the Whistleblower team as a Case Officer you need to request access to the Whistleblower Matters (whistleblower@apra.gov.au) mailbox. This will allow you to send emails from the Whistleblower Matters email address and access the previous emails on your matter.
- s 22 [redacted]

Record Keeping

- Copy in whistleblower@apra.gov.au into all emails sent regarding a whistleblower matter (qualifying or non-qualifying).
- Key actions taken on a Whistleblower matter should be recorded in the Whistleblower Tracker i.e. 01/01/2023 – Assessment sent to Supervision.
- Key emails (disclosure received from Whistleblower; Assessment sent to Supervision; Release made to a peer regulator) should be saved in the relevant IM folder.
- All emails on a matter are filed in the Whistleblower Matters mailbox folders. The Whistleblower Coordinator is responsible for maintaining these folders and the mailbox in general.

Matter ID's

- All potential Whistleblower matters are assigned a Matter ID when received by the Whistleblower Coordinator. Be sure to use this matter ID in all documents you prepare for the matter (release memos, closure memos etc) and in the subject line for all emails.

Whistleblower Tracker

- The Whistleblower Tracker is the central source for recording high level information and progress on Whistleblower matters.
- The Whistleblower Tracker is accessible by all APRA staff so no identifying or protected information is to be included in the spreadsheet. High level information and records of actions taken is all that is required. There are instructions on the first page of the spreadsheet.
- The Spreadsheet is organised by the year the disclosure was received. The Whistleblower Coordinator is responsible for maintaining the spreadsheet in its entirety (formulas, inputting matters etc); however both the Case Officer and Supervision should update the spreadsheet regularly.
- The Whistleblower Coordinator will set up the matter entry in the Whistleblower Tracker, but many fields must be input or updated by the Case Officer. These key fields include:
    - Status (select one of the options from the drop down menu). It is critical this field remains up to date;
    - Qualifying Whistleblower Y/N;
    - Comments/Actions;
    - Has the matter been referred to another APRA department? (link email if applicable);
    - Pending Corporate Legal Advice (link email if applicable);
    - Has the matter been referred to an external organisation? (link email if applicable); and
    - Has consent to refer the matter been obtained from the discloser? (link email if applicable).

Information Governance

- When the Whistleblower Coordinator notifies Supervision of a disclosure related to their entity, the Whistleblower Coordinator will also provide access to a folder in the restricted Whistleblower IM site.
- Only the relevant members of the Supervision team and the APRA Whistleblower Team have access to these folders. As a Case Officer you will only have access to matters for which you are responsible.
- It is the responsibility of the Supervision Team to notify the APRA Whistleblower Team of changes to the Supervision team that may affect access to Whistleblower matters. The Whistleblower

Coordinator will make the necessary changes to the folder permissions.

- It the policy of the APRA Whistleblower Team not to send any Whistleblower information as attachments to emails. To maintain the confidentiality of our Whistleblowers identities and information, we save everything in the restricted folders and provide links to the documents. Supervision are also required to also follow this procedure.
- Section 47C(1) [redacted]

Whistleblower Manager Approval

- At several instances in a Whistleblower matter you will require approval from the Whistleblower Manager. When you send an email to the Whistleblower Manager that requires approval please put FOR APPROVAL as the start of the subject line.

Handover Memo

- If you leave the Whistleblower team or are on extended leave (3 weeks or more) please prepare a handover memo and provide it to the Whistleblower Coordinator and Whistleblower Manager.
- See the Whistleblower template guide for a template handover memo.

Reporting

- The Whistleblower Coordinator prepares three regular reports on the Whistleblower Function:
  - Monthly report to Strategy and Risk;
  - Quarterly report to the divisional Business Managers; and
  - Annual report to the Executive Committee.
- To support accurate reporting please ensure your matters are updated in the Whistleblower Tracker in the last week of every month.

Key Performance Indicators

- The Whistleblower Function has two key KPI's:
  - 2 business day notification to Supervision of a new Whistleblower matter (responsibility of the Whistleblower Coordinator); and

  - Monthly update on all open matters (responsibility of the Supervision teams, supported by the divisional Business Managers).
- These KPI's are tracked in the Whistleblower Tracker. If you would like to learn more about how the KPI's are tracked please reach out to the Whistleblower Coordinator.

CASE OFFICER RESPONSIBILITY

There are 5 stages in a Whistleblower matter lifecycle. The key responsibilities for a Whistleblower Case Officer are stages 2 -5.

As a Case Officer you will become aware of a Whistleblower matter once it is assigned to you by the Whistleblower Coordinator.



RECIEVE

No responsibility for case officer.

ASSESS

You will receive an email from the Whistleblower Coordinator notifying you that you have been assigned as the Case Officer for a matter. This email will include the Matter ID, a link to the restricted IM folder, and details of the relevant Supervision team.

The email will be directed to the Supervision team to notify them that the Whistleblower team has received a disclosure related to their regulated entity. As a Case Officer you will be copied in to notify Supervision of their ongoing contact on the matter. An example of this initial notification email is below at Figure 1.

The Whistleblower Coordinator will have already emailed the potential Whistleblower to acknowledge the email. See the Whistleblower template guide for an example of this email.

The Whistleblower Coordinator will have already set up the matter folder in IM, and the matter entry in the Whistleblower Tracker.

Section 22 [redacted]

Figure 1: Notification email to Supervision and Case Officer

Send

From whistleblower@apra.gov.au

To

Cc Whistleblower Matters;

Subject New Potential Whistleblower Matter - Entity ABC 2023-0001

Whistleblower Procedure.pdf

Good morning,

The Whistleblower team have received a disclosure related to your entity, Entity ABC. I responded [when] to acknowledge the disclosure and sought additional information from the informant [only if applicable].

The matter has been logged in the Whistleblower Tracker as Matter 2023-0001. A restricted folder has been set up for this matter. All documents related to this matter are to be saved in this folder only, and are to be shared via email as links, not as attachments. Please let me know if anyone else in your team will need access to the folder.

If you have any questions on the procedure for handling Whistleblower material please let me know. I have also attached for your reference a copy of the Whistleblower procedure and a link to our APRANet page.

[case officer] has been assigned as the case officer for this matter and is currently undertaking an assessment of Whistleblower eligibility. Once complete [case officer] will provide you the assessment and assist with the next steps.

Please let me know if you have any questions.

Kind regards,

§ 22 [redacted]

§ 22 [redacted]

APRA Whistleblower Team

D § 22 [redacted] E whistleblower@apra.gov.au

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

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APRA acknowledges the traditional custodians of the lands and waters of Australia and pays respect to Aboriginal and Torres Strait Islander peoples past and present.

[redacted]

ASSESS

Step 1 – there is a 4 day KPI to complete the assessment

Your first responsibility upon receiving this email from the Whistleblower Coordinator is to review the potential Whistleblower disclosure. Once you have reviewed the disclosure you need to complete the Whistleblower checklist form (template here).

Section 47C(1) [redacted]

The form requires an assessment of eligibility for Whistleblower protections under Part 9.4AAA of the *Corporations Act 2001*. The form also requires an assessment of the seriousness of the potential Whistleblowers allegations, and the reliability of the source of the information.

If you have any questions regarding the assessment feel free to reach out the Whistleblower Coordinator and/or the Whistleblower Manager for assistance. The Whistleblower team can also seek advice from the Corporate Legal team. s 47E(d) [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

The assessment form also requires consideration of whether the disclosure should be shared with a peer regulator, or a law enforcement agency. Remember that APRA has obligations to report a serious indictable offence to law enforcement. APRA also has requirements to notify ASIC of a material breach of ASIC provisions. Under section 55D of the APRA Act, to notice ASIC "as soon as practicable" if APRA has a reasonable belief that a material breach of a law administered by ASIC has occurred.

If, during your assessment you come across documents or information that you consider may be subject to a valid claim for legal professional privilege by a third party, you should cease reading the documents or information immediately and contact the Whistleblower Coordinator.

Legal professional privilege exists when there are:

- Communications, whether oral, in writing or recorded;
- That are confidential in nature;
- Between a lawyer and their client, agent or third party;
- That have been brough into existence for the dominant purpose of:
    - Giving legal advice; or
    - For use in litigation that is either on foot or reasonably contemplated.

Such documents may be marked as 'confidential' or 'privileged', though such markers are not determinative. The Whistleblower Coordinator will be able to assist you with any queries in relation to privilege.

Step 2

Once you have completed the assessment and signed the form, send the assessment form to the Whistleblower Manager for approval.

Step 3

Once the assessment has been approved and signed off by the Whistleblower Manager you need to input the following information into the Whistleblower Tracker:

Section 47C(1) [redacted]

- A Yes/No in the Qualifying WB column – link the assessment form;
- The seriousness of the potential Whistleblowers allegations; and
- The reliability of the source of the information.

Step 4

The next step is to email Supervision to notify them of your assessment. The Whistleblower template guide has a template email for if the disclosure qualifies, and if the disclosure does not qualify. Examples of these emails are attached below (Figure 2 and Figure 3).

Section 47C(1) [redacted]

The Supervision team will already have access to the restricted IM folder.

Step 5

Once you have notified Supervision the next step is to wait for Supervision to notify you of their proposed strategy, or proposed releases to peer regulators.

Non-Qualifying Informant

If you have assessed that the Informant does not qualify for Whistleblower protections you still need to consider, in consultation with the relevant Supervision team if applicable if the disclosure should be released to a peer regulator or law enforcement agency.

- s 47E(d) [redacted]

If the Informant does not qualify for Whistleblower protections no further action is required from the Supervision team, beyond consideration of the prudential issues in their BAU supervision.

If no peer regulator or law enforcement release is required, or the release has been sent, the matter can be closed as a Whistleblower matter by the Whistleblower Coordinator in the Whistleblower Tracker.

Note: Just because the Informant does not qualify for Whistleblower protections does not mean the information may not be protected information or documents under s 56 of the *APRA Act 1998*. You will still need to consider if the information is protected information. s 47E(d) [redacted]

Figure 2: Notifying Supervision that disclosure does not qualify for Whistleblower protections.

OFFICIAL: Sensitive (APRA Act s56)

[email to be sent in same chain as first email to Supervision notifying them of the disclosure]

Good afternoon,

I refer to the matter 2022-0087 related to Bank ABC.

As the case officer for this matter I have assessed the disclosure (LINK ASSESSMENT) and have determined that it does not qualify for Whistleblower protections.

As the matter is non-qualifying for Whistleblower protections it has been closed off as a Whistleblower matter in the Whistleblower Tracker, however if you consider it raises prudential concerns, the matter can and should be considered within your supervision activities. Closing the matter as a Whistleblower matter does not have any impact on your teams current activities related to the disclosure information, beyond that you do not need to provide progress updates to our team.

It is also the Supervision team's decision as to whether the information contained in the disclosure would be of supervisory interest to any peer regulators (i.e. ASIC). We are happy to assist with any releases if required.

Please note that while the matter is non-qualifying, APRA treats disclosures in the same manner, irrespective of whether the informant qualifies as a Whistleblower. This means that the information should not be shared beyond the restricted folder provided (LINK FOLDER), and the identity and identifying information of the Complainant must be protected.

Please let me know if you have any questions on any of the above.

Kind regards,
[Case Officer]

Figure 3: Notifying Supervision that disclosure does qualify for Whistleblower protections.

OFFICIAL: Sensitive (APRA Act s56)

[email to be sent in same chain as first email to Supervision notifying them of the disclosure]

Good morning,

I have completed an assessment of Whistleblower eligibility [link assessment] for the disclosure received in Matter XXX-XXX, and have determined that the discloser qualifies for Whistleblower protections. I have saved a copy of the assessment in the matter folder [link folder]. Please let me know if anyone else in your team will need access to the folder.

The next step on this matter is for your team to review the material disclosed and consider whether you would like to seek any further information from the Whistleblower. If your team does not require further information at this stage, can you please advise once your team has developed a strategy to address any prudential issues raised in the disclosure. The Whistleblower team are happy to meet with your team to discuss the strategy for this matter.

It is also the Supervision team's decision as to whether the information contained in the disclosure would be of supervisory interest to any peer regulators (i.e. ASIC). [add here if you have reasons why you think a release to a per regulator is appropriate].The Whistleblower team are happy to assist with any releases if required.

Please let me know if you have any questions.

Kind regards,
[Case Officer]

STRATEGISE

The main responsibility of the Case Officer in the STRATEGISE phase is to support Supervision. In this phase Supervision need to develop their plan to obtain further information from the Whistleblower if required, and how to address their prudential concerns with the entity without revealing the existence of the Whistleblower.

As the Case Officer your responsibility is to support Supervision in understanding their responsibilities and obligations to the Whistleblower under the *Corporations Act 2001*. You are also required to support Supervision with any questions they have on the handling of protected documents and information under s 56 of the *APRA Act 1998*. The Corporate Legal team provide legal advice about the operation of s 56 and should be contacted as required.

Remember it is an offence to reveal a Whistleblowers identity or identifying information.

WARNING

Unauthorised disclosure of a Whistleblower's identity, or of information that could lead to their identification, is an offence under section 1311(1) of the *Corporations Act 2001*.

ACTION

More information from Whistleblower

It is Supervision's decision whether to obtain more information from the Whistleblower. If the Supervision team requires more information from the Whistleblower it is your responsibility as the Case Officer to arrange this meeting.

Section 47E(d)

When you email the Whistleblower, email them from the Whistleblower Matters email address, not your APRA email address s 47E(d) [redacted]

Meetings with a Whistleblower should always be attended by a member of the Whistleblower team. The Whistleblower Coordinator or Whistleblower Manager may attend the meeting to support you as required.

Supervision are responsible for taking the file note of these meetings.

The Whistleblower team have four key responsibilities in meetings with Whistleblowers:

- Open the meeting and introduce the APRA attendees on the call and their relevant department (Supervision/Whistleblower team);
- At the start of the meeting read the Whistleblower the mandatory information detailed in the Whistleblower Procedure.
    - It is best practice to preface this mandatory information by warning the Whistleblower the speech is lengthy and to let you know if they have any questions. It is essential that you confirm at the end of the speech that the Whistleblower understands the information you have provided.
- Answer any questions the Whistleblower has about their rights under the Whistleblower provisions of the *Corporations Act*; and
- Answer any questions the Whistleblower has on APRA's secrecy obligations and s 56 of the *APRA Act 1998.*
    - Most questions asked by Whistleblowers in these meetings can be answered by one of the following:

The secrecy provisions contained in section 56 of the Australian Prudential Regulation Authority Act 1998 prevent APRA and its officers from disclosing information relating to the supervision of a particular regulated institution. Accordingly, APRA is restricted in the feedback we are able to provide.

APRA does not provide legal advice, and we suggest that you obtain independent legal advice to satisfy yourself as to whether or not you are protected as a Whistleblower under the Corporations Act regime. That said, I can tell you that APRA treats disclosures in the same manner, irrespective of whether the informant qualifies as a Whistleblower.

If you have any questions on what you can and cannot answer in a meeting take the question on notice and reach out the Whistleblower Coordinator or Whistleblower Manager.

Note: Meetings for further information can also be arranged where an Informant does not qualify for Whistleblower protections, if required. Speak to the Whistleblower Coordinator if this is the case.

Release to a Peer Regulator

It is Supervision's decision whether the information contained in the disclosure would be of supervisory interest to any peer regulators, and it is the role of the Case Officer to support Supervision to make these decisions and facilitate the releases.

In your assessment (see ASSESS phase) you will make a recommendation to Supervision on whether the disclosure should be referred to a peer regulator, or a law enforcement agency.

Where APRA considers it necessary to disclose the identity of the Whistleblower, or information that is likely to lead to the identification of the Whistleblower, to a third party other than ASIC, the AFP or a Commonwealth, State or Territory authority (Third Party), the Whistleblower will be asked to consent to the information being disclosed. If the Whistleblower does not consent to the information being disclosed, the disclosure to the Third Party may not take place unless the Whistleblower Team can be sure the Whistleblower identity and information that may lead to their identity will not be shared.

Where APRA considers it necessary to disclose information to a Third Party that does not identify the Whistleblower, the Whistleblower will be asked if they have any concerns regarding the information being shared with the third-party. The Whistleblower's response will be considered when determining whether information will be shared.

If any documents or information provided by the Whistleblower may be subject to a valid claim for Legal Professional Privilege by a 3rd party (Ie an entity), they must not be released to a Third Party.

Reach out to the Whistleblower Manager for advice where you have a matter that may require a release to a Third Party.

Consent from the Whistleblower is not required where another subsection of s 1317AAE of the C*orporations Act 2001* is satisfied (see Figure 4).

Section 42 [redacted]

In some cases the Whistleblower name and contact details will be redacted if they express concerns with sharing their disclosure with ASIC (the Whistleblower Coordinator can help you make these determinations).

Consent from the Whistleblower is not required to share the disclosure with a member of the Australian Federal Police (s 1317AAE (2) (c) *Corporations Act 2001*) (see Figure 4).

Consent is not required to release information to AUSTRAC, the ATO, the FWO, the OAIC, the AFP and the ACCC, as they fall under the definition of Commonwealth authorities under s 1317AAE (3)(b) of the *Corporations Act 2001* (see Figure 5). For example,

- AUSTRAC established under the *Financial Transaction Reports Act 1988;*
- ATO established under the Taxation Administration Act 1953;
- ACCC established under the Competition and Consumer Act 2010.

Consent is not required to release information to a State or Territory police authority as these authorities fall under the definition of State or Territory Authority under s 1317AAE (3) of the *Corporations Act 2001* (see Figure 5 and Figure 6). Victoria Police established under the *Victoria Police Act 2013;*

- New South Wales Police established under the *Police Act 1990;*

- Australian Capital Territory Police is a division of the AFP covered by s 1317AAE (2) (c) *Corporations Act 2001*;
- Queensland Police established under the *Police Service Administration Act 1990*;
- Western Australia Police established under the *Police Act 1892*;
- South Australia Police established under the *Police Act 1998*;
- Northern Territory Police established under the Police Administration Act 1978.

s 47E(d) [redacted]

Consent may be required for other regulators or authorities if they do not fall within the definition of State or Commonwealth Authority under s 1317AAE (3) of the *Corporations Act 2001* (see Figure 5). If you have a matter that may require release to a novel regulator or authority reach out to the Whistleblower Manager for advice.

Be sure to note the applicable s 1317AAE exception when drafting the release letter and MTDM.

Figure 4

CORPORATIONS ACT 2001 - SECT 1317AAE

Confidentiality of whistleblower's identity

(1) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***discloser***) makes a disclosure of information (the ***qualifying disclosure***) that qualifies for protection under this Part; and

(b) the first person discloses any of the following (the ***confidential information***):

(i) the identity of the discloser;

(ii) information that is likely to lead to the identification of the discloser; and

(2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

(a) is made to ASIC; or

(b) is made to APRA; or

(c) is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(d) is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or

(e) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or

(f) is made with the consent of the discloser.

Figure 5

(3) Without limiting subsection (2), a disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

(a) is made by ASIC, APRA or a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); and

(b) is made to a Commonwealth authority, or a State or Territory authority, for the purpose of assisting the authority in the performance of its functions or duties.

Figure 6

"State or Territory authority" means an authority or other body (whether incorporated or not) that is established or continued in existence by or under a law of a State or Territory.

As the Case Officer your responsibilities in preparing a peer regulator or law enforcement release are to:

- **Contact the Whistleblower and request their consent (if applicable);**
- **Provide Supervision the relevant release letter and MTDM template (ASIC, ATO, AUSTRAC, ACCC, AFP, OAIC and FWO) and ASIC template MTDM;**
    - **Before releasing information to the FWO, the case officer should discuss with the Whistleblower Manager on whether a formal release is required;**

- s 47E(d) [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
  - [redacted]

[redacted]

Discussion with Regulated Entity

APRA cannot discuss anything with the regulated entity that may suggest that we have received a Whistleblower disclosure as unauthorised disclosure of the identity or identifying information of a Whistleblower is an offence under s 1317AAE (1) of the *Corporations Act 2001*.

This can make addressing the identified prudential issues difficult, and sometimes it is necessary to get more information from the entity. If you are in this circumstance reach out to the Whistleblower Coordinator or Whistleblower Manager for support and advice.

s 47E(d) [redacted]

If you are ever unsure if a Whistleblower matter is waiting on you for action, or if it is with Supervision, check the status column in the Whistleblower Tracker.

CLOSURE

The prudential issues raised by Whistleblower disclosures do not need to be resolved for Whistleblower matters to be closed, as long as the Supervision team have a plan to address the issues as part of their BAU supervision of the regulated entity.

As the Case Officer your responsibilities are to:

- Provide Supervision the template closure memo and instructions for closure;
  - Supervision to draft the closure memo;
  - ~~Case Officer to~~ do initial review~~,~~
  - ~~Case Officer and Supervision Analyst to sign closure memo~~ and then~~,~~
  - ~~Case Officer to~~ send closure memo to Whistleblower Manager for approval and sign off;
  - Request Supervision to obtain sign off from the delegate (relevant GM).

- Once Supervision has drafted the closure memo it is the Case Officer's responsibility to review the memo and provide any comments for Supervision to action. The key things to look for in the closure memo are:

- s 47E(d) [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

If you have any questions or concerns please contact the Whistleblower Coordinator or Whistleblower Manager for assistance.