



# WHISTLEBLOWER PROTECTION POLICY

## Document Information

This is a document controlled by the Board Audit Risk & Compliance Committee (ARCCo).

The owner of this document is the Risk and Compliance Manager who initiates relevant reviews of this policy as required and submits any recommendations to the CEO for review and subsequent consideration by ARCCo.

## Version History

The following outlines, at a high level, the changes that have been made to each version of this document and who made them, the name of the approver and the date approval was made.

Version	Change Description	Author	Approver		Approval Date
1.0		Sisley Ching BDO	BFS Board		12 June 2015
		<b>Owner</b>	<b>Management Review</b>	<b>Committee Recommendation</b>	<b>Board Approval Date</b>
2.0	Triennial Update, inclusion of external BDO contact service	Risk and Compliance Manager Glenn Baker	CEO, David Slinn	ARCCo 24/5/18	28/6/2018
2.1	Review of policy for compliance with 2019 update to Whistleblower Protection laws	Risk and Compliance Manager Glenn Baker	CEO, David Slinn	ARCCo 14/11/19	5/12/19
3.0	Biennial review and updates	RCM, Glenn Baker	CEO, David Slinn	ARCCo 19/5/22	N/A - app'd at ARCCo

**Review Date:** This Policy shall be reviewed, at least, biennially (previously and initially triennially) from the date of approval and all amendments to this Policy must be approved by ARCCo.

The review will ensure that the policy remains current and is effective.

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## 1 Objectives (Purpose of the policy)

The objectives of the BFS Whistleblower Protection Policy are to –

- encourage the reporting of matters of wrongdoing, particularly matters that may cause financial or non-financial loss to BFS or damage BFS's reputation;
- enable BFS to effectively deal with whistleblowing in a way that will protect the identity of the whistleblower and provide for secure storage of the information provided;
- establish policies for protecting whistleblowers against reprisal by any person internal or external to BFS; and
- provide alternative means of reporting the incident (internal, external and alternative channels).

This policy is an important component of the BFS risk management system and its corporate governance framework. It is intended to operate as a mechanism to aid the identification of any wrongdoing.

Awareness of the policy and its protection provisions is an important component of the employment information provided to BFS employees.

## 2 Legislative Requirements

The Corporations Act 2001 (Part 9.4AAA) since 1 July 2004 has provided certain immunity and protection from retaliation for a company employee who reports a suspected violation of the Corporations Act. These protections were designed to encourage people within companies, or with special connections to companies, to alert ASIC and authorities to illegal behaviour.

In 2019, the Commonwealth Government introduced changes to the Corporations Act 2001 that imposed new obligations on particular types of organisations, including BFS, to protect whistleblowers. The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 amends the Corporations Act and was assented to on 12 March 2019.

The BFS Whistleblowers Protection Policy is designed to comply with the requirements of the Corporations Act 2001 (as amended).

ASIC Regulatory Guide 270 provides explanatory information in relation to legislative requirements and identifies good practice.

## 3 How does this policy apply at BFS?

This policy applies to all employees, contractors, consultants and directors of BFS as well as clients and suppliers.

The 2019 amended legislation in the Corporations Act provides for protection to **'eligible whistleblowers'** as defined in the Act (Part 9.4AAA). The definitions encompass the groups listed above except for clients who are not included but may have other legal rights or remedies they can pursue. It is also noted that employment disputes or workplace grievances may not be covered by whistleblower protections.

Refer to the Appendix for an extract from the ASIC Information Sheet (INFO 238) that describes the categories of 'eligible whistleblowers'.

## 4 Definitions

**Whistleblowing** is the disclosure of actual or suspected wrongdoing in an organisation that reveals fraud, corruption, illegal activities, gross mismanagement, malpractice or any other serious wrongdoing.

A **whistleblower** is a person who reports serious wrongdoing (reportable conduct) in accordance with this policy.

**Reportable conduct** by a person or persons connected with BFS is conduct that: –

- is dishonest;
- is fraudulent or involves money laundering or the misappropriation of funds;
- is corrupt, including offering or accepting a bribe;
- is illegal, including theft or criminal damage;
- is in breach of Corporations Act or ASIC Act, or any related Commonwealth or State legislation or local authority by-laws (eg Trade Practices Act or Income Tax Assessment Act);
- is unethical;
- is other serious improper conduct;
- may cause financial or non-financial loss to BFS or be otherwise detrimental to the interests of BFS; or
- is gross mismanagement, serious and substantial waste or repeated instances of breach of administrative procedures.

## 5 Responsibilities – Protection and Investigation

### 5.1 Whistleblower Protection Officer (WPO)

**BFS CEO** is assigned the role of the WPO. If the report contains allegations against the CEO or the whistleblower has a reasonable belief that this avenue would not be sufficiently independent, the external (non-management) WPO is the Chair of ARCCo. Beyond this, arrangements are in place for a whistleblower to be able to contact an independent alternative external party being, BDO East Coast Partnership (BDO ECP). BDO ECP contact information is detailed below.

The powers and responsibilities of the WPO include to ensure that:

- each disclosure of wrongdoing referred to them is appropriately reported, inquired into and/or investigated, in accordance with the rules of procedural fairness, by a:
  - qualified internal investigator who is independent of the area where the wrongdoing is alleged to have occurred, or
  - BDO ECP, as a qualified external investigator independent of BFS, where considered necessary;
- the action taken in response to the inquiry/investigation is appropriate to the circumstances;
- no retaliatory action is or has been taken against the person who made the disclosure;
- there is fair treatment of individuals mentioned in a disclosure;
- direct, unfettered access to independent financial, legal and operational advisers is available as required, and that there is a direct line of reporting to the Board, as may be required to satisfy the objectives of this Policy;
- wrongdoing disclosures are notified in broad terms to Internal Audit;
- the whistleblower is kept informed of the progress and outcomes of the inquiry/investigation subject to considerations of privacy of those against whom the allegations have been made; and
- all disclosures and investigations are documented, securely stored and confidentially retained.

At all times the BFS WPO must maintain trustworthiness, diplomacy and tact, and the ability to be objective. Confidentiality should be observed as far as possible.

## 5.2 Whistleblower Investigation Officer (WIO)

Where it is acceptable to the whistleblower making the report (via whatever reporting option is chosen) for the investigation to be conducted within BFS, the CEO will oversee the investigation which will be conducted by the Manager, Risk and Compliance. The CEO and Manager, Risk and Compliance would in this case be joint WIO. Where considered appropriate, the CEO may engage BDO in its capacity as Internal Auditor to act as WIO and undertake the investigation.

The role of WIO has the following responsibilities:

- To investigate the substance of the report to determine whether there is evidence in support of the matters raised or, alternatively, to refute the revelations made; and
- WIO may second the expertise of other officers in BFS to assist in the investigation and may seek the advice of internal or external experts as required.

In circumstances where the whistleblower is not comfortable for the investigation to be undertaken 'in-house' by BFS, the report will probably have been made using the external service provided by BDO ECP and BDO ECP will discuss with the Chair of ARCCo the terms for an independent investigation. Where a report is made directly to the Chair of ARCCo, the Chair of ARCCo will consult with the whistleblower as to their preferences for the way the investigation is conducted and engage with BDO ECP if that path is to be taken.

## 6 Reporting and Disclosure (Internal, External, and Alternative)

For a whistleblower to qualify for protection the legislation requires a disclosure to be made to one of the following:

- a director, company secretary, company officer, or senior manager of the company or organisation, or a related company or organisation
- an auditor, or a member of the audit team, of the company or organisation, or a related company or organisation
- a person authorised by the company or organisation to receive whistleblower disclosures
- ASIC or the Australian Prudential Regulation Authority (APRA), or
- a lawyer.

While the disclosure must be made to one of these people or organisations, concerns can be raised anonymously.

Additionally, the disclosure needs to be about:

- a company
- a bank
- a provider of general or life insurance
- a superannuation entity or trustee
- an incorporated association or other body corporate that is a trading or financial corporation. This includes not for-profit organisations that trade in goods or services, lend or borrow money, or provide other financial services, and their trading or financial activities

make up a sufficiently significant proportion of their overall activities. [Not all not-for-profit organisations are subject to the whistleblower protections.]

Further, the whistleblower must have reasonable grounds to suspect that the information they are disclosing about the company or organisation concerns:

- misconduct, or
- an improper state of affairs or circumstances.

'Reasonable grounds' means that a reasonable person would also suspect the information indicates misconduct or a breach of the law.

The information can be about the company or organisation, or an officer or employee of the company or organisation, engaging in conduct that:

- breaches the Corporations Act
- breaches other financial sector laws enforced by ASIC or APRA
- breaches an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months, or
- represents a danger to the public or the financial system.

### **BFS Reporting Mechanisms**

The BFS Whistleblowers Protection Policy has **internal**, **external** and **alternative** reporting mechanisms for reporting reportable conduct.

Information received from the BFS whistleblower must only be disclosed to a person not connected with the investigation –

- if the BFS whistleblower has been consulted and consents in writing to the disclosure; or
- if BFS, the BFS WPO or WIO are compelled by law to do so.

#### **6.1 Internal Reporting** (directors, employees, contractors or consultants)

Sometimes, a suspicion of wrongdoing may arise from a misunderstanding and is not in fact wrongdoing or is a matter where communication is restrained by confidentiality requirements or other legitimate reasons. Accordingly, any employee, or contractor that detects, or has reasonable grounds for suspecting wrongdoing, is encouraged to raise any concerns with their supervisor or their supervisors' manager and seek advice on the best way to progress the disclosure. Where this is not appropriate, an alternative reporting mechanism is available.

#### **6.2 External Reporting**

A person with a relationship with BFS includes clients and suppliers. Where such a person observes possible wrongdoing but is reluctant to report it for fear of retribution, they are encouraged to report their concerns to a higher level of management than the person in BFS that they ordinarily deal with. There may be a simple explanation that they had not considered. Where this is not appropriate, an alternative reporting mechanism is available.

#### **6.3 Alternative Reporting**

Alternative reporting to normal channels is available where:

- the normal reporting channel is considered inappropriate,
- Line management was notified but failed to deal with it, or
- the person or organisation disclosing wrongdoing is concerned about possible retaliation.

In any of these circumstances, an internal or external whistleblower (director, employees, volunteer, contractor, consultant, clients or suppliers) may provide the report of wrongdoing to the CEO, the Chair of ARCCo or BDO ECP.

BDO ECP Alternative Reporting is an independent means for internal or external whistleblowers to lodge reports. This service is provided 24 hours a day and 7 days a week, with the telephone system operating during business hours only. A report can be lodged by a freecall 1300 telephone number or by way of a confidential email address or a postal address, detailed below.

BDO ECP provides its whistleblower service in the name of BDO Secure with the following contact details:

BDO Secure freecall: 1300 408 955

BDO Secure email: [securebdo@bdo.com.au](mailto:securebdo@bdo.com.au)

BDO Secure address: BDO Secure  
Level 11, 1 Margaret Street  
Sydney NSW 2000

## 7 Anonymous Reporting

Anonymous reports of wrongdoing are accepted under this policy. Anonymous reports have significant limitations that inhibit a proper and appropriate inquiry or investigation. These limitations include the inability to provide feedback on the outcome and/or to gather additional particulars to assist the inquiry/investigation. Specific protection mechanisms cannot be provided. A Whistleblower Protection Officer will not be appointed where a report is anonymous.

## 8 Protection of Whistleblowers

The amended Part 9.4AAA of the Corporations Act 2001 contains certain protections for whistleblowers.

These are:

1. Protection of information provided and identity (confidentiality)  
The company or organisation that receives the whistleblower report can be asked to keep identity, or information that is likely to lead to identification, confidential. It is illegal to disclose the information or to reveal the identity a whistleblower without consent. The information may be reported to ASIC, APRA or the Australian Federal Police.
2. Protection from legal action  
The Corporations Act protects a whistleblower against certain legal actions related to making the whistleblower disclosure, including:
  - criminal prosecution (and the disclosure cannot be used against the whistleblower in a prosecution, unless the disclosure is false)
  - civil litigation (such as for breach of an employment contract, duty of confidentiality, or other contractual obligation), or
  - administrative action (including disciplinary action).

### 3. Protection from detriment

It is illegal (through a criminal offence and civil penalty) for someone to cause or threaten detriment to a whistleblower because they believe or suspect that you have made, may have made, or could make a whistleblower disclosure.

Detriment may be caused by:

- dismissal from employment
- alteration of position or duties to a person's disadvantage
- discrimination between the person and other employees
- harassment or intimidation
- harm or injury, including psychological harm
- damage to property, reputation, business or financial position or any other damage.

A whistleblower may be able to seek compensation or other remedies.

Compensation can be sought through a court if loss, damage or injury is suffered. For an employee experiencing detriment at work for reporting misconduct, a court may order the person causing the detriment or the employer to compensate the whistleblower.

Other remedies can be pursued, such as:

- the employer reinstating the person to their original position or a comparable position
- the court issuing an injunction to prevent or stop detrimental conduct
- the person, company or organisation that caused the detriment or threatened detriment apologising.

#### BFS Approach

Whilst not all disclosures may be protected at law (e.g. client disclosures or employment disputes/workplace grievances), BFS will adopt the principle of providing protection to people or organisations with a relationship with BFS:

- at least to the extent of protection at law; and
- beyond legal protection wherever it is practical in the circumstances.

BFS will treat all disclosures as genuine and undertake appropriate investigations as detailed in Section 5 of this Policy which outlines the responsibilities of the WPO and WIO in this regard.

BFS will ensure, as far as is possible, that confidentiality is maintained in relation to disclosures and take action to ensure, as far as possible, that no detriment is caused to the person or organisation making the disclosure. Refer to WPO responsibilities in Section 5 of this Policy for more detail.

## 9 Training and Policy Availability

The Whistleblower Policy shall be included in the initial employee induction training and annual refresher training program for the BFS Responsible Managers and Staff.

Those managers or directors who receive or are able to receive disclosures will be provided with appropriate training, so they know how to respond if a protected disclosure is made.



Training attendance should be recorded on the training register.

This policy is accessible to all employees and directors on the BFS Hub on SharePoint under Documents/Policies.

## 10 Corporate Penalties

Increased penalties apply to the whistleblower protections in Part 9.4AAA.

Under the amended Part 9.4AAA, it is a criminal offence to contravene:

- the requirement to keep a whistleblower's identity confidential
- the prohibition on victimisation following a protected disclosure by a whistleblower.

Civil penalties also apply to contravention of these provisions. Failure by a public company or large proprietary company to comply with the requirement to have in place a whistleblower policy is also an offence, but the whistleblower law does not provide for a civil penalty in this case.

The civil penalties that apply for breach of confidentiality of a whistleblower's identity or victimisation of a whistleblower are as follows:

- for an individual, the greater of 5000 penalty units\* and three times the benefit derived or detriment avoided because of the contravention (if that can be determined by the court)
- for a company, the greatest of 50,000 penalty units, three times the benefit derived or detriment avoided because of the contravention (if that can be determined by the court), and either 10 per cent of annual turnover up to 2.5 million penalty units.

Criminal penalties are as follows:

- breach of confidentiality of identity of whistleblower
  - for an individual: six months imprisonment and/or 60 penalty units\*
  - for a company: 600 penalty units
- victimisation
  - for an individual: two years imprisonment and/or 240 penalty units
  - for a company: 2400 penalty units
- failure to have in place a whistleblower policy
  - for an individual: 60 penalty units
  - for a company: 600 penalty units.

\*A penalty unit (at the date of this policy update) is \$222, as determined by s 4AA of the Crimes Act 1914 (Cth).

## 11 Appendix - Extract from ASIC Information Sheet (INFO 238)

### Eligible Whistleblowers

*Table 1: Criteria for protection as a whistleblower*

Criteria	The law requires
Your role	<p>You <b>must</b> be a current or former:</p> <p>employee of the company or organisation your disclosure is about, or a related company or organisation</p> <p>officer (usually that means a director or company secretary) of the company or organisation your disclosure is about, or a related company or organisation</p> <p>contractor, or an employee of a contractor, who has supplied goods or services to the company or organisation your disclosure is about, or a related company or organisation. This can be either paid or unpaid, and can include volunteers</p> <p>associate of the company or organisation, usually a person with whom the company or organisation acts in concert</p> <p>trustee, custodian or investment manager of a superannuation entity, or an officer, employee, or a goods or service provider to a trustee, custodian, investment manager, or</p> <p>spouse, relative or dependant of one of the people referred to above.</p> <p>While you must hold or have held one of these roles to access the protections, you do not have to identify yourself or your role, and you can raise your concerns anonymously.</p>