

Leo Cussen Centre for Law Whistleblower protection policy

Whistleblower protection policy

1 Purpose

- (a) Leo Cussen Institute, trading as Leo Cussen Centre for Law (**Leo Cussen**) recognises the value in developing and fostering a culture of corporate compliance, ethical decision-making and protecting **eligible whistleblowers** who make **protected disclosures** from suffering **detriment**.
- (b) The purpose of this policy is to:
 - (i) prevent and detect **disclosable matters**;
 - (ii) outline the process by which a **protected disclosure** may occur, including how and to whom a **protected disclosure** should be made;
 - (iii) outline the process by which Leo Cussen will investigate **protected disclosures**;
 - (iv) inform **eligible whistleblowers** who make **protected disclosures** about the protections from **detriment**; and
 - (v) outline the process for fair treatment of persons to whom a **protected disclosure** relates or mentions.

2 Scope

- (a) This policy applies to all employees and officers of Leo Cussen.
- (b) This policy will be made available to all employees and officers of Leo Cussen via Leo Cussen's website and Leo Cussen's Intranet.

3 What is a protected disclosure?

A disclosure of information by an individual will be a **protected disclosure** for the purposes of this policy if:

- (a) the discloser is an **eligible whistleblower**; and
- (b) the disclosure is made to an **eligible recipient** (which could be done orally or in writing); and
- (c) the disclosure is of a **disclosable matter**.

4 Disclosable matters

4.1 What is a disclosable matter?

A **disclosable matter** is a disclosure of information by an **eligible whistleblower**:

- (a) where the **eligible whistleblower** has reasonable grounds to suspect that the information concerns misconduct or an improper state of affairs or circumstances (including but not limited to dishonest conduct, unlawful conduct, corruption or fraud) in relation to Leo Cussen; or
- (b) where the **eligible whistleblower** has reasonable grounds to suspect that the information indicates that Leo Cussen or an officer or employee of Leo Cussen, has engaged in conduct that:
 - (i) contravenes any provisions of the *Corporations Act 2001*, *ASIC Act 2001*, or an instrument or regulation made under any of those Acts; or
 - (ii) contravenes any other law of the Commonwealth that is punishable by imprisonment for 12 months or more; or
 - (iii) represents a danger to the public or the financial system; or
- (c) in relation to a disclosure about affairs of Leo Cussen or an **associate** of Leo Cussen (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) (**associate**) relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner of Taxation (**tax affairs**):
 - (i) that is made to an **eligible recipient** referred to in clause 6(b) (i) to (iv), where the **eligible whistleblower**:
 - (A) has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the **tax affairs** of Leo Cussen or an **associate**; and
 - (B) considers that the information may assist the **eligible recipient** to perform functions or duties in relation to the **tax affairs** of Leo Cussen or an **associate**; or
 - (ii) that is made to the Commissioner of Taxation, where the **eligible whistleblower** considers that the information may assist the Commissioner of Taxation to perform their functions or duties in relation to the **tax affairs** of Leo Cussen or an **associate**.

4.2 Personal work-related grievances

- (a) Personal work-related grievances of an **eligible whistleblower** are not **disclosable matters**, and are therefore not **protected disclosures**, except to the extent that they concern **detriment** to the **eligible whistleblower** in contravention, or alleged contravention, of clause 9.3.
- (b) Personal work-related grievances arise where the information disclosed:
 - (i) concerns a grievance about any matter in relation to the **eligible whistleblower's** employment, or former employment, having (or tending to have) implications for the **eligible whistleblower** personally. For example, this includes, but is not limited to:
 - (A) interpersonal conflicts;
 - (B) decisions relating to the engagement, transfer or promotion of the **eligible whistleblower**;

- (C) decisions relating to the terms and conditions of the **eligible whistleblower's** engagement;
- (D) decisions to suspend, discipline or dismiss the **eligible whistleblower**; or
- (E) conduct (or alleged conduct) in respect of workplace bullying, harassment, sexual harassment or discrimination;

and does not:

- (ii) have significant implications for Leo Cussen (or another organisation regulated by whistleblower protection laws) that are unrelated to the **eligible whistleblower**; and
 - (iii) relate to conduct (or alleged conduct) set out in clauses 4.1(b)(i), 4.1(b)(ii) or 4.1(b)(iii).
- (c) Matters relating to personal work-related grievances may be dealt with under Leo Cussen's Workplace Behaviour policy.

5 Who is an eligible whistleblower?

An individual will be an **eligible whistleblower** if they are, or have been:

- (a) an officer of Leo Cussen;
- (b) an employee of Leo Cussen;
- (c) an individual who supplies services or goods to Leo Cussen;
- (d) an employee of a person that supplies services or goods to Leo Cussen (paid or unpaid);
- (e) an individual who is an **associate** of Leo Cussen (within the meaning of the *Corporations Act 2001* (Cth)); or
- (f) a relative, dependant or spouse of an individual referred to in any of clauses 5(a) to 5(e).

6 Who is an eligible recipient?

- (a) For **disclosable matters** referred to in clauses 4.1(a) or 4.1(b), each of the following is an **eligible recipient** to whom an **eligible whistleblower** may make a **protected disclosure**:
 - (i) a senior manager or an officer of Leo Cussen which, for the avoidance of doubt, includes Leo Cussen's CEO, Director CPD, Director Corporate Services, Human Resources Manager and Finance Manager. Up to date contact details for those individuals are set out on Leo Cussen's HR Management System, ELMO;
 - (ii) an auditor, or a member of an audit team conducting an audit, of Leo Cussen;

- (iii) an actuary of Leo Cussen;
 - (iv) ASIC;
 - (v) APRA;
 - (vi) a Commonwealth authority; or
 - (vii) where the **eligible whistleblower** is disclosing for the purpose of obtaining legal advice or legal representation in relation to the operation of relevant whistleblower legislation - a legal practitioner.
- (b) For **disclosable matters** referred to in clause 4.1(c) (in relation to **tax affairs**), each of the following is an **eligible recipient** to whom an **eligible whistleblower** may make a **protected disclosure**:
- (i) the **eligible recipients** listed in clauses 6(a)(i) and 6(a)(vii);
 - (ii) an auditor, or a member of an audit team conducting an audit, of Leo Cussen;
 - (iii) a registered tax agent or BAS agent who provides tax agent or BAS services to Leo Cussen;
 - (iv) any other employee or officer of Leo Cussen who has functions or duties that relate to the **tax affairs** of Leo Cussen; or
 - (v) where the **eligible whistleblower** considers that the information may assist the Commissioner of Taxation to perform their functions or duties in relation to Leo Cussen's **tax affairs** – the Commissioner of Taxation.
- (c) Before formally disclosing a **disclosable matter** to an **eligible recipient**, an **eligible whistleblower** may wish to seek additional information from the **eligible recipient**, or seek independent legal advice.

7 Emergency and public interest disclosure

Clause 7 does not apply to **disclosable matters** that relate to **tax affairs**.

7.1 Emergency disclosure

An **eligible whistleblower** may make an **emergency disclosure** to a Member of Parliament or a journalist where:

- (a) they have already made a **protected disclosure** to ASIC, APRA or a Commonwealth authority; and
- (b) they have reasonable grounds to believe that the information disclosed concerns a substantial and imminent danger to the health or safety of either:
 - (i) one or more persons; or
 - (ii) to the natural environment; and
- (c) they have notified the entity to which they made the **protected disclosure** that

they intend to make an **emergency disclosure**; and

- (d) the extent of the information disclosed in the **emergency disclosure** is no greater than necessary to inform the recipient of the substantial and imminent danger.

7.2 Public interest disclosure

An **eligible whistleblower** may make a **public interest disclosure** to a Member of Parliament or a journalist where:

- (a) they have already made a **protected disclosure** to ASIC, APRA or a Commonwealth authority;
- (b) at least 90 days have passed since the **protected disclosure**;
- (c) they do not have reasonable grounds to believe that action has been or is being taken to address the matters to which the **protected disclosure** related;
- (d) they have reasonable grounds to believe that making the **public interest disclosure** in accordance with clause 7.2 would be in the public interest;
- (e) after the period referred to in clause 7.2(b), they have notified the entity to which they made the **protected disclosure** that they intend to make a **public interest disclosure**; and
- (f) the extent of the information disclosed in the **public interest disclosure** is no greater than necessary to inform the recipient of the **disclosable matters**.

8 Investigation of protected disclosures

8.1 Investigation of protected disclosures made to Leo Cussen

- (a) The investigation procedure set out in clause 8.1 applies where an **eligible whistleblower** discloses a **disclosable matter** to an **eligible recipient** listed in clause 6(a)(i).
- (b) In carrying out their obligations under clause 8.1, all persons must ensure they do not breach the confidentiality requirements in clause 9.1(b).
- (c) As soon as reasonably practicable after the **eligible recipient** receives a **disclosable matter**, the eligible recipient must:
 - (i) provide the **eligible whistleblower** with the protections set out in clause 9 on an interim basis until the investigation in clause 8.1(e)(i) is finalised; and
 - (ii) ask the **eligible whistleblower** if they consent to the **eligible recipient** disclosing their identity, or information that may identify them, to:
 - (A) the individuals occupying the positions listed in clause 8.1(d);
 - (B) the person(s) investigating the **disclosable matter**; and/or
 - (C) any other parties involved in the investigation of the **disclosable matter**, such as witnesses.

- (d) Within a reasonable period of receipt of the **disclosable matter**, the **eligible recipient** must inform the Human Resources Manager of the nature and substance of the **disclosable matter**.

If the **disclosable matter** involves information about an individual referred to in clause 8.1(d), the **eligible recipient** should inform a different individual referred to in clause 8.1(d).

- (e) The individual informed under clause 8.1(d) will take all necessary steps to facilitate an investigation into:
- (i) whether the **eligible whistleblower** disclosed a **disclosable matter** to an **eligible recipient**; and
 - (ii) if so, whether the **protected disclosure** is substantiated, partly substantiated, or unsubstantiated.
- (f) An investigation under clause 8.1(e):
- (i) may be undertaken internally or through the engagement of an external investigator. Where appropriate, the investigation may be undertaken under client legal privilege;
 - (ii) will involve regular updates to the **eligible whistleblower** where practicable;
 - (iii) will be undertaken with the purpose of gathering all relevant evidence and in accordance with the rules of natural justice; and
 - (iv) will be undertaken in a confidential manner, including compliance with the confidentiality requirements in clause 9.1(b). Information about the **disclosable matter** will only be disclosed where necessary in order for an investigation to proceed effectively.
- (g) Where it is found under clause 8.1(e)(i) that the **eligible whistleblower** disclosed a **disclosable matter** to an **eligible recipient**, then a **protected disclosure** is made out and the **eligible whistleblower** will be afforded the protections in clause 9 on an ongoing basis.
- (h) If a **protected disclosure** is made and it relates to or mentions an employee or officer of Leo Cussen, Leo Cussen will ensure the fair treatment of the employee or officer by:
- (i) to the extent possible given the requirements set out in clause 9.1(b), making the employee or officer aware of the nature of the allegations relating to or mentioning them and updating the employee or officer on the progress of the investigation;
 - (ii) giving the employee or officer an opportunity to respond to the allegations relating to or mentioning them; and
 - (iii) making the employee or officer aware of EAP services available to them.
- (i) **Protected disclosures** made anonymously can still be protected under the *Corporations Act 2001* (Cth). However, if Leo Cussen is not able to contact the **eligible whistleblower**, its ability to conduct an investigation into the **protected**

disclosure may be limited.

9 Protections for eligible whistleblowers who make protected disclosures

9.1 Protection of identity

- (a) An **eligible whistleblower** who makes a **protected disclosure** is not required to identify themselves to Leo Cussen or anyone else in order to be protected under this policy or the law.
- (b) If a person obtains information as a result of a **protected disclosure** that identifies or is likely to identify the **eligible whistleblower**, that person must not disclose that information to any person except:
 - (i) with the **eligible whistleblower's** consent; or
 - (ii) to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of relevant whistleblower protection legislation; or
 - (iii) to ASIC, APRA or the AFP; or
 - (iv) if the **protected disclosure** relates to **tax affairs** – to the Commissioner of Taxation; or
 - (v) to any government authority for the purpose of assisting the authority in the performance of its functions or duties, as long as it has also been disclosed to ASIC, APRA or the AFP (or, if the **protected disclosure** relates to **tax affairs**, the Commissioner of Taxation).
- (c) However, a person may disclose information (other than the actual identity of the **eligible whistleblower**) if reasonably necessary for the purposes of investigating a matter that is relevant to the **protected disclosure** and if the person takes all reasonable steps to reduce the risk that the **eligible whistleblower** will be identified as a result.
- (d) An **eligible whistleblower's** identity may be protected by Leo Cussen redacting certain information from documents, referring to the **eligible whistleblower** using language that does not identify their gender, age or role, and securely storing all materials relating to the **protected disclosure**.

9.2 Protection from certain liability

- (a) An **eligible whistleblower** will not be subject to any civil, criminal or administrative liability for making a **protected disclosure**.
- (b) However, this does not prevent an **eligible whistleblower** from being subject to any civil, criminal or administrative liability for conduct of the **eligible whistleblower** that is revealed by the **protected disclosure**.
- (c) Leo Cussen will not exercise any contractual right, or seek any contractual remedy, against an **eligible whistleblower** on the basis that the **eligible whistleblower** made the **protected disclosure**, including termination of contract.

- (d) If the **protected disclosure** is made to the Commissioner of Taxation, or is a **public interest disclosure** or an **emergency disclosure**, the information contained in the **protected disclosure** is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition of a penalty.

9.3 Protection from detriment

- (a) An **eligible whistleblower** must not suffer **detriment** or be otherwise disadvantaged in reprisal for making a **protected disclosure**.
- (b) Specifically, no one may cause or threaten to cause **detriment** to another person because they believe or suspect that any person may have made, proposes to make, or could make a **protected disclosure**.
- (c) **Detriment** includes (but is not limited to):
 - (i) dismissal of an employee;
 - (ii) injury of an employee in their employment;
 - (iii) alteration of an employee's position or duties to their disadvantage;
 - (iv) discrimination between an employee and other employees;
 - (v) harassment or intimidation of a person;
 - (vi) harm or injury to a person, including psychological harm;
 - (vii) damage to a person's property;
 - (viii) damage to a person's reputation;
 - (ix) damage to a person's business or financial position; and
 - (x) any other damage to a person.
- (d) Leo Cussen will take all reasonable steps to protect **eligible whistleblowers** who make **protected disclosures** from suffering **detriment** including by:
 - (i) ensuring all individuals referred to in clause 6(a)(i) and 6(b)(iv) are trained to identify and report behaviour that causes **detriment**;
 - (ii) ensuring that all employees and officers of Leo Cussen are made aware of this policy and the right to make a **protected disclosure** without suffering **detriment**; and
 - (iii) enabling **eligible whistleblowers** to make a complaint to any of the individuals referred to in clause 6 if they believe they have suffered **detriment**.

9.4 Compliance with protections for eligible whistleblowers

An employee or officer of Leo Cussen who fails to comply with clause 9.1(b), 9.3(a) or 9.3(b) may be subject to disciplinary action up to and including termination of employment. Such a person may also be in breach of the law, which may result in:

- (a) civil liability to pay compensation, damages and/or a penalty; and/or
- (b) criminal liability to pay penalties and/or a maximum of two years' imprisonment.

9.5 Availability of compensation

A person may seek compensation and other remedies through the courts if they suffer loss, damage or injury because of **detriment** arising from a belief or suspicion that any person made or could make a **protected disclosure**, and Leo Cussen failed to take reasonable precautions and exercise due diligence to prevent that **detriment**.

10 Malicious disclosures

This policy provides employees and officers of Leo Cussen with an avenue to raise legitimate and serious concerns about **disclosable matters**. It is unacceptable for Leo Cussen employees and officers to make malicious and false disclosures, or to knowingly provide false or misleading information regarding a disclosure. The making of a malicious and false disclosure or the provision of knowingly false or misleading information may be subject to disciplinary action up to and including termination of employment.

11 Training

Leo Cussen will carry out training for employees to educate them on their rights and obligations under this policy and applicable whistleblower legislation.

Leo Cussen will carry out separate training for **eligible recipients** within Leo Cussen on how to respond to **protected disclosures**.

12 Review and amendment

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