

## **WHISTLE BLOWER POLICY FOR FIRST CHOICE CREDIT UNION**

### **FIRST CHOICE CREDIT UNION**

#### **1. INTRODUCTION**

##### **1.1 Purpose of this Policy**

The Board of Directors (the "**Board**") of First Choice Credit Union (the authorised deposit-taking institution "**ADI**") is committed to best practice in risk management, corporate governance, compliance and ethical behaviour generally. As a matter of best practice the purpose of this Policy is to:

- ensure individuals who disclose misconduct or an improper state of affairs, offences against the law or information that indicates a significant risk to public safety or to the stability of the financial system, at the ADI, can do so safely, securely and with confidence that they will be protected and supported;
- ensure disclosures are dealt with by the ADI appropriately and on a timely basis;
- provide transparency around the ADI's framework for receiving, handling and investigating disclosures;
- encourage disclosures; and
- help deter wrongdoing generally.

The Board has adopted this Policy to provide a framework for an eligible whistleblower of the ADI to disclose these matters to certain parties. All of our employees who become aware of wrongdoing have a duty to speak up: see Clause 3.1.

This Policy explains:

- how to make a disclosure within the ADI or external to the ADI; and
- the protections available to eligible whistleblowers.

This Policy has been prepared in compliance with the Corporations Act 2001 (Cth) ('the Act'), APRA Prudential Standard CPS 520 *Fit and Proper* ('CPS 520') and Part IVD of the Taxation Administration Act 1953 (Cth) ('Taxation Administration Act'). The Policy may be read in conjunction with the Act, CPS 520 and Australian Securities and Investments Commission (ASIC) Regulatory Guide 270 *Whistleblower policies*

##### **1.2 Application of this Policy**

This Policy applies to

- the ADI's directors and employees;

- the ADI's contractors;
- employees of ADI's contractors; associates of the ADI;
- a relative, dependant or spouse of any of the above
- eligible whistleblowers and eligible recipients for the purposes of sections 14ZZU and 14ZZV respectively of the Taxation Administration Act.

Matters that qualify for protection under this Policy, the Act and the Taxation Administration Act ('disclosable matters') are:

- information the eligible whistleblower (defined in Clause 2.2) has reasonable grounds to suspect concern misconduct, or an improper state of affairs or circumstances (defined in Clause 2.3) in relation to the ADI or a related body corporate;
- information indicating the ADI or a related body corporate (including the related body's employees or officers) have engaged in conduct that:
  - (a) constitutes an offence against, or a contravention of, a provision of any of the following:
    - (i) the Act
    - (ii) the Australian Securities and Investments Commission Act 2001 (Cth)
    - (iii) the Banking Act 1959 (Cth)
    - (iv) the Financial Sector (Collection of Data) Act 2001 (Cth)
    - (v) the Insurance Act 1973 (Cth)
    - (vi) the Life Insurance Act 1995 (Cth)
    - (vii) the National Consumer Credit Protection Act 2009
    - (viii) the Superannuation Industry (Supervision) Act 1993 (Cth); or
  - (b) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
  - (c) otherwise represents a danger to the public or the financial system;
- information that a responsible person does not meet the fit and proper criteria as defined in CPS 520; and
- information that the ADI has not complied with the requirements of CPS 520 to provide information to APRA about a responsible person not meeting the fit and proper person criteria .

The following disclosures also qualify for protection under this Policy:

- a public interest disclosure as defined in section 1317AAD (1) of the Act;
- an emergency disclosure as defined in section 1317AAD (2) of the Act; and
- a disclosure to the Commissioner of Taxation under section 14ZZT of the Taxation Administration Act

Provisions about public interest disclosures and emergency disclosures are contained in Clause 3.2.

**Disclosures that are not about disclosable matters do not qualify for protection under the Corporations Act or the Taxation Administration Act where relevant.**

## **2. DEFINITIONS**

### **2.1 Whistleblowing**

For the purpose of this Policy, whistleblowing is defined as:

- a disclosure by an eligible whistleblower (defined in Clause 2.2) to an eligible recipient of a disclosable matter (defined in Clause 1.2) in relation to the ADI or a related body corporate; or
- a disclosure of information that a responsible person does not meet the APRA-regulated institution's fit and proper criteria as set out in APRA CPS 520; and
- a disclosure of information that the ADI has not complied with CPS 520 to provide that information to APRA

### **2.2 Whistleblower**

For the purpose of this Policy, an eligible whistleblower is defined as:

- an officer of the ADI;
- an employee of the ADI;
- any person who has information that a responsible person does not meet the fit and proper criteria under CPS 520;
- any person who has information that the ADI has not complied with CPS 520 to provide information to APRA about a responsible person not meeting the fit and proper criteria;
- paid or unpaid suppliers of services or goods to the ADI (and the employees of these suppliers);
- an associate of the ADI; and
- a relative, dependant or spouse of any of the above

who makes a disclosure defined in Clause 2.1; and

- an eligible whistleblower for the purposes of section 14ZZU of the Taxation Administration Act.

In this Policy each person in the categories listed above is referred to as either an 'ADI person' or a 'discloser', as the case requires.

### **2.3 Misconduct or an improper state of affairs or circumstances**

For the purpose of this Policy, misconduct or an improper state of affairs or circumstances is defined as:

- fraud;
- negligence;

- breach of trust;
- breach of duty;
- any conduct that:
  - is dishonest or unethical;
  - may cause harm; or
  - is prohibited by the ADI's standards or code(s) of conduct;
- misconduct or an improper state of affairs or circumstances as provided for in section 14ZZT of the Taxation Administration Act.

Examples of misconduct or an improper state of affairs or circumstances include the following:

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- fraud including tax fraud, money laundering, terrorism financing and the misappropriation of funds;
- offering or accepting a bribe;
- financial irregularities;
- failure to comply with, or breach of, legal or regulatory requirements including taxation legislation; and
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made or be planning to make a disclosure.

## **2.4 Eligible recipient**

An eligible recipient is a person within or external to the ADI who can provide advice on or receive a disclosure of a disclosable matter (defined in Clause 1.2). For the purposes of this Policy an eligible recipient is:

- an officer (including Directors) or senior manager of the ADI;
- the internal or external auditor (including a member of an audit team conducting an audit) or actuary of the ADI or related body corporate;
- a person authorised by the ADI to receive disclosures that may qualify for protection, including the Whistleblower Complaints Officer (WCO) (Chief Risk Officer); and
- an eligible recipient for the purposes of section 14ZZV of the Taxation Administration Act.

See also "Who to report to" and "Disclosure to legal practitioner" in Clause 3.2.

### **3. DUTY TO REPORT**

#### **3.1 Duty of all ADI persons**

All ADI persons have a duty to report known, suspected or potential cases of improper conduct. Failure to do so could result in disciplinary action. ADI persons must make a disclosure directly to one of the eligible recipients defined in this Clause 2.4 in order to seek protection as an eligible whistleblower.

#### **3.2 Who to report to**

##### *Disclosures to eligible recipients of ADI*

The ADI encourages ADI persons and disclosers to make disclosures to an internal or external eligible recipient of the ADI in the first instance. This is to enable the ADI to address what has been disclosed as early as possible. This approach is intended to help build confidence and trust in the ADI's whistleblower policy, processes and procedures.

The WCO is the person appointed to the internal position and is responsible for the management of the whistleblower complaint procedures and will seek the Board's approval for all actions required following the investigation of complaints.

##### *Disclosures to regulatory bodies*

A discloser can make a disclosure directly to regulatory bodies, or other external parties, about a disclosable matter and qualify for protection under the Act and the Taxation Administration Act without making a prior disclosure to the ADI.

An ADI person can make a disclosure external to the ADI and qualify for protection as a whistleblower, if the person reasonably believes it is necessary to contact regulatory bodies or other external parties. Such external disclosures can be made to one or more of the following:

- the Australian Securities and Investments Commission;
- the Australian Prudential Regulatory Authority;
- the Commissioner of Taxation;
- any other Commonwealth body prescribed by regulation.

For further information on how to make external disclosures to regulatory bodies see:

For reports to ASIC:

<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/how-asic-handles-whistleblower-reports/>

For reports to APRA:

<https://www.apra.gov.au/become-a-whistleblower-and-make-a-public-interest-disclosure>

For reports to the ATO:

<https://www.ato.gov.au/general/gen/whistleblowers/>

### *Public interest disclosures and emergency disclosures to journalist or Member of Parliament*

An ADI person can make a public interest disclosure or an emergency disclosure as defined in the Act to a journalist or parliamentarian under certain circumstances and qualify for protection. Advice on these types of disclosures and how to make them can be obtained from the WCO or a legal practitioner (see below).

### *Disclosure to legal practitioner*

Disclosures to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Act and the Taxation Administration Act are protected under this Policy (see Clause 4 below)

## **3.3 No relief from legal obligation to report**

ADI persons may have a legal obligation to report certain offences or other matter to regulatory authorities. Making a report in accordance with this Policy may not relieve an ADI person such legal obligations. ADI persons should discuss with the WCO or obtain independent legal advice about external reporting obligations.

## **4. PROTECTION UNDER THIS POLICY**

### **4.1 Whistleblower protection**

This Policy protects an eligible whistleblower who:

- reports a disclosable matter as defined in Clause 1.2;
- makes a public interest disclosure or an emergency disclosure as provided for in sections 1317AAD (1) and (2) respectively of the: or
- makes a disclosure to the Commissioner of Taxation as provided for in section 14ZZT of the Taxation Administration Act.

An eligible whistleblower qualifies for protection from the time they make their disclosure, regardless of whether the ADI person, discloser or recipient recognises that the disclosure qualifies for protection.

## **4.2 Identity protection (confidentiality)**

When information is disclosed by an ADI person or a discloser in accordance with this Policy, it is illegal for the person receiving the information to tell anyone other than the Australian Securities Commission (ASIC) Australian Prudential Regulatory Authority) (APRA, the Australian Federal Police or the Commissioner of Taxation any of:

- the information disclosed;
- the identity of the person making the disclosure; or
- any information which will enable the identification of the person making the disclosure

unless the ADI person or discloser consents to the disclosure.

Exceptions to this prohibition are contained in clause 4.3.

The WCO will provide assurance to a discloser that the ADI is committed to protecting the confidentiality of their identity.

The WCO will explain the procedures the ADI has in place for ensuring confidentiality and privacy (see also 'Protection of Privacy' below).

## **4.3 Exceptions to prohibition on disclosure of identity or information**

The **identity** of the ADI person or discloser may be disclosed without that person's consent where the disclosure is made:

- by ASIC, APRA or the Australian Federal Police to a Commonwealth, state or territory authority to help the authority in the performance of its functions or duties;
- to a legal practitioner for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the Act and/or the Taxation Administration Act ; or
- to a person or body prescribed by Commonwealth regulations.

The **information** contained in the ADI person's or discloser's disclosure may be disclosed without that person's consent if:

- the information does not include the ADI person or discloser's identity;
- the ADI has taken all reasonable steps to reduce the risk that the ADI person or discloser will be identified from the information; and
- it is reasonably necessary in the view of the person conducting the investigation for investigating the issues raised in the disclosure.

## **4.4 Detrimental conduct**

The ADI's officers, employees, contractors and their relatives, dependants or spouses, must not engage in conduct that causes detriment to a discloser (or another person), in relation to a disclosure, if:

(a) the person believes or suspects that the discloser (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection; and

(b) the belief or suspicion is the reason, or part of the reason, for the conduct.

Examples of detrimental conduct include:

- dismissal of the discloser;
- injury of the discloser in his or her employment;
- alteration of a discloser's position or duties to his or her disadvantage;
- discrimination between an employee and other employees of the same employer;
- harassment or intimidation of a discloser
- harm or injury to a discloser of the discloser, including psychological harm;
- damage to a person's property;
- damage to a person's reputation;
- damage to a person's business or financial position; or
- any other damage to a person

Each example above includes detriment to or a relative, spouse or dependent of the discloser.

The ADI's officers, employees, contractors and their relatives, dependants or spouses, must not make a threat to cause detriment to a discloser (or another person) in relation to a disclosure. A threat may be express or implied, or conditional or unconditional. 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.

Examples of detrimental conduct **do not** include

- administrative action that is reasonable to protect an ADI's person from detriment (e.g. when the disclosure relates to wrongdoing in the discloser's immediate work area); or
- managing an ADI's unsatisfactory work performance in accordance with the ADI's performance management framework.

Under this policy the ADI's person is protected from detrimental conduct by any person (including officers, employees, consultants and contractors of the ADI) and from a threat to cause detriment to a discloser (or another person) in relation to a disclosure. The ADI will regard any such conduct very seriously and take appropriate action, which may include, in the case of employees, disciplinary action and dismissal.

Similarly, all reasonable steps must be taken to ensure that no person is subject to, or threatened with, a detriment because of any notification in purported compliance with the requirements of the Taxation Administration Act and APRA CPS 520 (see our Fit and Proper Policy).

The WCO will:



- provide assurance to a discloser that the ADI is committed to protecting the welfare of the discloser; and
- explain the ADI's processes for assessing the risk of detriment against a discloser and other persons after receiving a disclosure; and
- suggest counselling (or other professional or legal services) that are available to a discloser;
- strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation; and
- advise the specific actions the ADI will take to protect a discloser from risk of detriment (or if the detriment has already occurred what specific actions the ADI will take to protect and support the discloser); and
- explain how the ADI will ensure that management are aware of their responsibilities under this Policy including but not limited to:
  - maintain the confidentiality of a disclosure;
  - address the risks of isolation or harassment;
  - manage conflicts; and
  - ensure fairness when managing the performance of, or taking other management action relating to, a discloser;
- explain to the discloser how they can lodge a complaint if they have suffered detriment and what actions the ADI will take in response to the complaint; and
- explain how the discloser can seek independent legal advice or contact the relevant regulatory bodies in the event they believe they have suffered detriment.

#### **4.4 Improper conduct**

Making a disclosure under this Policy may provide some protection to eligible whistleblowers in relation to their involvement in misconduct or an improper state of affairs. (see "What if the whistleblower is involved" below).

#### **4.5 Industrial relations issues**

Employee and industrial relations related issues and human resources related issues are excluded from the operation of this Policy because there are other established mechanisms to raise such complaints.

#### **4.6 Personal work-related grievances, vexatious complaints**

Personal work-related grievances and malicious or vexatious complaints do not qualify for protection under this Policy.

Unsubstantiated allegations that are proven to have been maliciously, or are proven to be knowingly false, will be viewed seriously with disciplinary actions taken by the ADI where appropriate.

## **5. HANDLING A WHISTLEBLOWER DISCLOSURE**

Receipt of a non-anonymous whistleblower disclosure by the WCO will be acknowledged by the WCO to the whistleblower. The WCO will then promptly refer the matter to the appropriate person within the ADI for investigation.

The WCO will keep the whistleblower and regularly informed of the progress of action taken in respect of the report they make.

## **6. INVESTIGATING REPORTS OF IMPROPER CONDUCT**

### **6.1 Who investigates a report**

Where a disclosure is referred by the WCO to the General Manager (GM), the GM will ask a senior manager of the ADI to investigate the disclosure.

In certain circumstances (for example where the disclosure involves allegations of fraud) the WCO may inform the Board and recommend the appointment of external investigators.

Senior managers will only be asked to investigate a matter if they can do so in a disinterested manner.

In the event that the disclosure relates to the ADI's GM, WCO, or a director, such a disclosure will be directed immediately to the Chairs of the Board Audit and Board risk committees.

Where a disclosure relates to a significant matter involving the GM or a senior manager that reports directly to either of them, the WCO will refer the disclosure directly to the Chair of the Board.

### **6.2 How an investigation is carried out**

The person appointed to investigate the disclosure will be required to follow the ADI's usual procedures for handling a complaint or disciplinary issue. This would generally involve:

- appointing a person within the ADI who will be responsible for handling and investigating the disclosure;
- undertaking a fair, independent and discreet investigation into the substance of the report to determine whether:
  - (a) it falls within this Whistleblower Policy; and
  - (b) a formal, in-depth investigation is required;
- there is evidence to support the disclosure;
- the time-frame for the investigation being set;
- respecting individual confidentiality (see Clauses 4.2, and 6.5 further information on confidentiality);
- determining the nature of any technical, financial or legal advice that may be required to support the investigation;

- collecting all available data and investigating the disclosure;
- interviewing any relevant person in order to observe the rules of procedural fairness;
- proceeding with due care and appropriate speed; and
- consulting or informing employee representative bodies of the substance of the disclosure, as required.

### **6.3 Where the identity of the discloser is known**

Where the whistleblower has identified himself or herself, the investigator would usually begin the investigation by interviewing that person. However, this person's identity would not be made known to any other person without the whistle-blower's specific consent, including in the circumstances set out in section 10.1 below.

### **6.4 Where the identity of the discloser is not known**

The ADI may not be able to undertake an investigation if a disclosure is made anonymously, and the ADI person or discloser has refused or omitted to provide a means of contacting them.

### **6.5 Identity of discloser cannot be disclosed by investigator or any other person**

(1) Without the ADI person or discloser's consent, the ADI will not disclose information that is contained in a disclosure as part of its investigation process—unless:

- (a) the information does not include the ADI person or discloser's identity;
- (b) the ADI removes information relating to the ADI person or discloser's identity or other information that is likely to lead to the identification of that person (e.g. name, position title and other identifying details); and
- (c) it is reasonably necessary for investigating the disclosure.

(2) If an ADI person or discloser makes a disclosure that qualifies for protection under Part IVD of the Taxation Administration Act, a person involved in the investigation is not required to:

- (a) disclose to a court or tribunal:
  - (i) the identity of the ADI person or discloser; or
  - (ii) information that is likely to lead to the identification of the ADI person or discloser; and
- (b) produce to a court or tribunal a document containing:
  - (i) the identity of the ADI person or discloser; or
  - (ii) information that is likely to lead to the identification of the ADI person discloser.

This is except where it is necessary to do so for the purposes of giving effect to Part IVD of the Taxation Administration Act or the court or tribunal thinks it necessary in the interests of justice to do so.

## **6.6 Keeping the ADI person or discloser informed during the investigation**

A disclosure will be acknowledged within a reasonable period after it is received, if the ADI person or discloser can be contacted (including through anonymous channels).

The ADI will provide the ADI person or discloser with updates;

- when the investigation process has begun;
- while the investigation is in progress; and
- after the investigation has been finalised.

An ADI person or discloser will receive an update in person from the WCO while an investigation is ongoing, at least **every three months**.

## **6.7 Documents and reporting process**

The findings from an investigation will be documented by the ADI and such documentation will be retained by the ADI for five (5) years.

# **7. OUTCOME OF INVESTIGATIONS**

## **7.1 What happens after an investigation**

At the end of the investigation, the investigator will report his or her findings to the WCO or GM as the investigator deems appropriate, to determine the appropriate response. This response will include rectifying any improper conduct and taking any action required to prevent any future occurrences of the same or similar conduct.

In the event that the investigation related to the ADI's managing director, GM, WCO, or a director, the investigator will report his or her findings direct to the chair of the audit and risk committee.

Where issues of discipline arise, the response will also be in line with the ADI's procedures for disciplinary matters.

Where allegations of improper conduct made against another person cannot be substantiated, that person will be advised accordingly and will be entitled to continue in his or her role as if the allegations had not been made.

## **7.2 What if the whistleblower is involved**

A person who has committed or been involved in improper conduct will not be immune from disciplinary action merely because they have reported the improper conduct in accordance with this Policy.

However, the ADI person's conduct in making the report is likely to be considered in determining what disciplinary action is appropriate.

In some limited circumstances, a full and frank admission may be a mitigating consideration in respect of disciplinary or other action.

## **7.3 Review**

If an ADI person or discloser is not satisfied with the outcome of an investigation, a review may be conducted by an officer of the ADI who is not involved in handling and investigating disclosures.

The review findings will be provided to the board or the audit and risk committee.

The ADI is not obliged to reopen an investigation and may conclude a review if it finds that the investigation was conducted properly, or new information is either not available or would not change the findings of the investigation.

## **7.4 Compensation and other remedies**

Nothing in this Policy prevents an ADI person or discloser from seeking compensation and other remedies, including where appropriate remedies set out in section 14ZZZA of the Taxation Administration Act, through the courts if:

- he or she suffers loss, damage or injury because of a disclosure; and
- the entity failed to prevent a person from causing the loss, damage or injury.

Nothing in this policy prevents a discloser lodging a complaint with a regulatory body if they are not satisfied with the outcome of the ADI's investigation.

The ADI encourages ADI persons and disclosers to seek independent advice regarding compensation and remedies at law.

## **7.5 Civil, criminal and administrative liability protection**

ADI persons and disclosers are protected under section 1317AB (1) of the Act from any of the following in relation to their disclosure:

- civil liability (e.g. any legal action against the ADI person or discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
- criminal liability (e.g. attempted prosecution of the ADI person or discloser for unlawfully releasing information, or other use of the disclosure against the person in a prosecution (other than for making a false disclosure); and
- administrative liability (e.g. disciplinary action for making the disclosure).

Nothing in this policy grants immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

## **8. PROTECTING PRIVACY**

### **8.1 Protection of privacy**

To the extent that any of the information recorded by the WCO on the ADI's behalf constitutes "personal information" about the whistleblower under applicable Privacy legislation, the following applies: that:

- the purpose of the collection of that information is to assist the WCO and the ADI to respond to issues raised by the whistleblower and to protect or enforce the ADI's legal rights or interests or to defend any claims;
- personal information may be used for the primary purpose for which it was collected or for any related secondary purpose that could reasonably be expected; and
- personal information may be disclosed as described under this section.

The ADI's policy is not to collect "sensitive information" unless the person to whom the information relates consents to the collection and the information is reasonably necessary for one or more of the ADI's functions or activities for the implementation of this Policy, or the collection is authorised or required by law.

"Sensitive information" means information or an opinion about a person's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, memberships of a profession or trade, membership of a trade union, sexual orientation or practices, criminal record or health, genetic information, biometric information and templates.

## **9. ACCESSIBILITY OF THIS POLICY**

This Policy will be made available to the ADI's officers and employees via the following:

- staff briefing sessions and/or smaller team meetings;
- staff intranet or other communication platform;
- staff noticeboards;
- the employee handbook;
- employee induction information packs; and
- training for new starters; and
- on the website.

**For potential disclosers outside the ADI this Policy will be made available by the ADI's website.**

## **10. POLICY REVIEW**

### **10.1 Reports provided under this Policy**

The WCO will provide periodic reports containing a general summary of the number and type of cases made to the WCO together with a description of the nature and results of any investigation conducted as a result of a report.

In the compilation of these reports the identity of any person who has made a report under this Policy in good faith or any information, which may enable that person to be identified will not be disclosed.

These reports will be provided to the:

- CEO or his or her delegate and the Chief Risk Officer on a regular basis (the frequency to be determined by the GM from time to time); and
- Board Audit and Board Risk Committees every quarter.

A consolidated report will also be provided to the Board Audit and Board Risk Committees each year.

### **10.2 Review and updating of this Policy and program**

The ADI is committed to monitoring the effectiveness of this Policy. A review of the Policy will be conducted every two years and any issues identified in the review will be rectified in a timely manner. Some issues that will be considered during the review are whether:

- the scope and application of the policy are appropriate,
- the policy, processes and procedures are helpful and easy to understand;
- the policy, processes and procedures reflect current legislation and regulations, and current developments and best practice for managing disclosures; and
- the ADI's handling of disclosures and its protections and support for disclosers need to be improved.