

AWRI Policy: Whistleblower Policy

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1. Purpose

The *AWRI Code of Conduct* requires all Employees to perform their duties with honesty and integrity, to refrain from any corrupt, improper or criminal conduct, and to report known or suspected instances of corrupt, improper or criminal conduct within the organisation. The AWRI encourages individuals to report wrongdoing to ensure that appropriate action can be taken. This Policy sets out a safe reporting mechanism and establishes protections for Employees and other persons seeking to report any such instances of actual or suspected wrongdoing. This Policy also provides guidance on which individuals can be considered Eligible Whistleblowers, what type of matters are Disclosable Matters, the reporting procedure and in what circumstances this Policy does not apply.

2. Definitions

APRA

Australian Prudential Regulation Authority

ASIC

Australian Securities and Investments Commission

ATO

Australian Taxation Office

AWRI

The Australian Wine Research Institute Limited

Contractor

An organisation or individual engaged by the AWRI to perform work for the AWRI including its employees if the Contractor is an organisation.

Corporations Act

Corporations Act 2001 (Cth)

Disclosable Matter

A Disclosable Matter is one that involves information that an Eligible Whistleblower has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances.

Director

A person appointed to the AWRI Board of Directors.

Eligible Recipient

An Eligible Recipient is a person to whom an Eligible Whistleblower may report a Disclosable Matter.

Eligible Whistleblower

An Eligible Whistleblower is a person who is a current or former:

- Employee or officer of the AWRI;
- Contractor, consultant, volunteer or Supplier of the AWRI;
- associate of the AWRI; or
- a relative, dependant or spouse of one of those individuals, who reports information relating to a Disclosable Matter.

Employee

All permanent full-time, permanent part-time, casual and fixed-term contract employees and students of the AWRI.

Executive Management Group

A Committee of senior managers of the AWRI, the exact composition of which is governed by the EMG Charter.

Manager

Any Employee with responsibility for supervising other Employees or aspects of the AWRI's operations, including team leaders and supervisors.

Managing Director

The Managing Director of the AWRI.

Personal Work-Related Grievance

A disclosure of information that relates to the discloser's current or former employment, which has implications for the discloser personally, but does not:

- have any other significant implications for the AWRI (or another related entity), or
- relate to conduct, or alleged conduct, about a Disclosable Matter.

Examples of personal work-related grievances include:

- an interpersonal conflict between the discloser and another Employee;
- a decision relating to the engagement, transfer or promotion of the discloser;
- a decision relating to the terms and conditions of engagement of the discloser;
- a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

Related Body Corporate

A related body corporate has the meaning given to that term in the *Corporations Act*.

Supplier

A supplier of goods or services to the AWRI, including its employees.

Whistleblower Protection Officer

An AWRI employee who has been authorised by the AWRI to receive disclosures relating to Whistleblowing matters. Contact details for Whistleblower Protection Officers are listed in Schedule 1.

3. Scope

This Policy applies to all current and former Employees, officers, associates, Contractors, consultants, Suppliers, volunteers and relatives, dependants and spouses of such Employees, officers, associates, Contractors, consultants, Suppliers and volunteers in all aspects of work undertaken for the AWRI.

This Policy applies to disclosures of information where the discloser has reasonable grounds to suspect misconduct or an improper state of affairs or circumstances in relation to the AWRI.

4. Responsibility

Directors

Ensure the establishment of a clear and effective framework for the making and handling of reports of Disclosable Matters. Ensure effective support and protection for those who report a Disclosable Matter under this Policy. When necessary, receive reports of Disclosable Matters under the Policy and address them in accordance with the Policy framework.

Employees

Comply with the *AWRI Code of Conduct* and this Policy. Report Disclosable Matters using the appropriate framework provided in this Policy if there are reasonable grounds to believe or suspect that a Disclosable Matter may have occurred. Promote and maintain a culture of fair treatment and respect for all.

AWRI

Create a positive work environment where everyone is treated fairly and with respect. Encourage individuals to report Disclosable Matters to ensure that appropriate action can be taken. Treat reports of Disclosable Matters seriously and respond promptly, impartially and confidentially. Provide appropriate protections for Eligible Whistleblowers.

Executive Management Group

In addition to the responsibilities applying to Employees, foster a culture that supports the reporting of Disclosable Matters. Ensure familiarity of Employees with this Policy. When necessary or appropriate, receive reports of Disclosable Matters under this Policy and address them in accordance with the Policy framework.

Managers

In addition to the responsibilities applying to Employees, foster a culture that supports the reporting of Disclosable Matters. Ensure familiarity of Employees with this Policy. If approached by a person considering making a report of a Disclosable Matter under this Policy, assist that person in understanding whether this Policy applies to their situation and direct them to the Whistleblower Protection Officer for further assistance.

Suppliers, Contractors, consultants and volunteers

Report Disclosable Matters using the appropriate framework provided in this Policy if there are reasonable grounds to believe or suspect that a Disclosable Matter may have occurred.

Whistleblower Protection Officer

In addition to the responsibilities applying to Employees, receive reports of Disclosable Matters under this Policy and address them in accordance with the Policy framework.

5. Policy

5.1 Who is an Eligible Whistleblower?

An Eligible Whistleblower is a person who is a current or former:

- Employee or officer of the AWRI;
- Contractor, consultant, volunteer or Supplier of the AWRI;
- associate of the AWRI; or
- a relative, dependant or spouse of one of those individuals,

who reports information relating to a Disclosable Matter (misconduct or an improper state of affairs – refer to section 5.2 for further information). In order to qualify for protection under the *Corporations Act* as an Eligible Whistleblower, the disclosure of information must be made directly to:

- an Eligible Recipient (refer to section 5.3 for further information);
- ASIC, APRA or another Commonwealth body prescribed by legislation;
- a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the *Corporations Act*; or
- a Member of Parliament or a journalist, but only when the disclosure is made as an emergency disclosure or a public interest disclosure (refer to section 5.4 for further information).

5.2 What is a Disclosable Matter?

A Disclosable Matter is one that involves information that the Eligible Whistleblower, has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstance in relation to:

- the AWRI; or
- a Related Body Corporate of the AWRI.

Misconduct can include fraud, negligence, default, breach of trust and breach of duty. Misconduct or an improper state of affairs could be illegal conduct or, while not illegal or in contravention of any law, conduct that may indicate a systemic issue that the AWRI should be aware of.

Examples of misconduct or an improper state of affairs may include (on a non-exhaustive basis):

- violation of a law or regulation by the AWRI, including corruption, bribery, theft, fraud, coercion and wilful omission;
- financial malpractices, such as procurement fraud, serious and substantial waste of public resources or misappropriation of the AWRI assets;
- practices endangering the health or safety of the public;
- practices endangering the environment;
- unethical behaviours, including manipulation of the AWRI data/records, leaking of confidential or proprietary information, or research misconduct such as misleading ascription of authorship, falsification of results or misrepresentations to obtain funding.

Disclosures that are not about Disclosable Matters do not qualify for protection under the *Corporations Act*.

5.3 Who is an Eligible Recipient to receive a disclosure of information in relation to the AWRI?

An Eligible Recipient is a person to whom an Eligible Whistleblower may report a Disclosable Matter and includes:

- an officer or senior manager of the AWRI, which includes Directors and members of the Executive Management Group;
- an auditor, or member of an audit team conducting an audit of the AWRI;

- a person authorised by the AWRI to receive disclosures relating to whistleblowing matters. For this purpose, the AWRI authorises the person/s listed in Schedule 1 to be the AWRI's Whistleblower Protection Officer/s.

A Disclosable Matter can also be reported to ASIC, APRA or another Commonwealth body prescribed by legislation or to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the relevant provisions in the *Corporations Act*.

5.4 What is an emergency disclosure or a public interest disclosure?

In certain circumstances an Eligible Whistleblower may report a Disclosable Matter to a Member of Parliament (State or Commonwealth), legislature (Territory) or a journalist, when it is in the interests of the public to do so or if there is a substantial and imminent danger to the health and safety of one or more persons, or to the natural environment. There are, however, a number of pre-conditions that must be satisfied before such a disclosure will qualify for whistleblower protection.

A public interest disclosure can only be made when:

- the Eligible Whistleblower has previously made a disclosure of that information (**the previous disclosure**) that qualifies for protection;
- at least 90 days have passed since the previous disclosure was made;
- the Eligible Whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matter to which the previous disclosure related;
- the Eligible Whistleblower has reasonable grounds to believe that making a further disclosure of the information would be in the public interest;
- the extent of the information disclosed in the public interest is no greater than is necessary to inform the recipient (Member of Parliament/journalist) of the misconduct or the improper state of affairs;
- the Eligible Whistleblower gives the body to which the previous disclosure was made written notice that:
 - includes sufficient information to identify the previous disclosure;
 - states that the Eligible Whistleblower intends to make a public interest disclosure; and
 - the public interest disclosure is made to a Member of Parliament (State or Commonwealth, legislature (Territory) or a journalist.

An emergency disclosure can only be made when:

- the Eligible Whistleblower has previously made a disclosure of that information (**the previous disclosure**) that qualifies for protection;
- the Eligible Whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health and safety of one or more persons or to the natural environment;
- the Eligible Whistleblower gives the body to which the previous disclosure was made written notice that includes sufficient information to identify the previous disclosure and states that the Eligible Whistleblower intends to make an emergency disclosure; and
- the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient (Member of Parliament or legislature/journalist) of the substantial and imminent danger.

A journalist must be a person working in a professional capacity as a journalist for a newspaper, magazine, radio or television broadcasting service or electronic service (including a service provided through the internet) that is:

- operated on a commercial basis or by a body that provides a national broadcast service within the meaning of the *Broadcasting Services Act 1992* (Cth); and
- is similar to a newspaper, magazine or radio broadcast.

Disclosures on social media or through provision of material to self-defined journalists are not covered by whistleblower protections.

5.5 Making a report

Where an Eligible Whistleblower becomes aware of or has reasonable grounds to suspect misconduct or an improper state of affairs or circumstances (**a Disclosable Matter**) they are encouraged to make a report using the following reporting channels.

A report relating to a Disclosable Matter should be made in the first instance to the AWRI's Whistleblower Protection Officer. Contact details are provided in Schedule 1. A report may be made via email, post or telephone.

If, however, the Eligible Whistleblower would prefer to make a report to someone other than the Whistleblower Protection Officer, the report should be made to the Managing Director. If the Eligible Whistleblower feels that the Managing Director may be complicit in the Disclosable Matter the report should be made to the Chair of the AWRI Board of Directors. If the Eligible Whistleblower feels that the Chair of the AWRI Board of Directors may also be complicit in the Disclosable Matter, the report should be made to another Director. Contact details for the Managing Director and Chair of the Board are provided in Schedule 1.

While all Directors and members of the Executive Management Group are eligible to receive whistleblower reports, a report outside of the abovementioned procedure should only occur when the usual procedure is inappropriate to follow under the specific circumstances.

Any such report should, where possible, be in writing and should contain, as appropriate, details of:

- the nature of the alleged wrongdoing;
- the facts on which the Eligible Whistleblower's belief that wrongdoing has occurred and has been committed by the person(s) named are founded;
- the nature and whereabouts of further evidence that would substantiate the Eligible Whistleblower's allegations, if known.

Evidence to support such concerns should be brought forward at this time if it exists. While the absence of such evidence will be taken into account in subsequent consideration of whether to open an investigation into the matter, such evidence will not, however, be an absolute prerequisite for the activation of further investigative procedures.

While internal reporting is encouraged, in circumstances where it is not appropriate, an Eligible Whistleblower can make a report to an appropriate external regulatory body, such as ASIC.

5.6 Confidentiality

An Eligible Whistleblower may make a disclosure of information anonymously or request that their identity not be disclosed by the Eligible Recipient. They may also choose to remain anonymous over the course of an investigation and after it is finalised. Access to information relating to a report of a Disclosable Matter will be restricted to the person receiving the report and those people necessary to conduct a thorough investigation. Such information will be kept in a secure repository with restricted access.

Disclosures of Disclosable Matters can be made anonymously and still be protected under the *Corporations Act*.

If the Eligible Whistleblower's identity is provided when making the disclosure, the AWRI will, in accordance with its legal obligations, keep the identity of the Eligible Whistleblower confidential and not disclose the Eligible Whistleblower's identity, or information that is likely to lead to the identification of the Eligible Whistleblower to a third party, except where:

- the Eligible Whistleblower consents to the disclosure;
- the disclosure is made to (or between) regulators (ASIC, APRA, ATO etc) or a member of the Australian Federal Police;
- the disclosure is made to a legal practitioner for the purpose of the AWRI obtaining legal advice or representation in accordance with the *Corporations Act*; or
- where the disclosure is otherwise required or permitted by law.

Under circumstances whereby a disclosure of information is received by the AWRI and the investigation cannot be undertaken without information that might reveal the identity of the Eligible Whistleblower (**Confidential Information**), the AWRI may disclose the Confidential Information, provided that:

- the disclosure of the Confidential Information is reasonably necessary for the purposes of investigating the conduct disclosed by the Eligible Whistleblower; and
- all reasonable steps are taken to reduce the risk of the Eligible Whistleblower being identified.

Unauthorised disclosure of an Eligible Whistleblower's identity or information that is likely to lead to the identification of that person is illegal and shall also be a breach of this Policy. The AWRI may take disciplinary action against any Employee who makes an unauthorised disclosure under this Policy.

If an Eligible Whistleblower has a complaint that concerns a breach of confidentiality regarding their identity, the Eligible Whistleblower should use the same reporting system as set out under section 5.5 of this Policy, if appropriate. If it is not appropriate in the circumstances to use the internal AWRI reporting procedure, then a complaint regarding a breach of confidentiality can also be made to a regulator such as ASIC, APRA or the ATO for investigation.

5.7 Investigative procedures

On receiving a report of a Disclosable Matter from an Eligible Whistleblower under this Policy, the Eligible Recipient will, if not the Managing Director, notify the Managing Director of the report within five working days. If the report concerns the conduct of the Managing Director, the Eligible Recipient will notify the Chair of the AWRI Board of Directors. If the report concerns the conduct of the Chair, the Eligible Recipient will notify another Director. In most cases it is anticipated that the Managing Director (or the Chair, if that report concerns the conduct of the Managing Director) will be responsible for ensuring that an investigation of the charges is established, adequately resourced and conducted in a timely manner. This process may commence with preliminary inquiries prior to the instigation of a formal investigation. Best endeavours will be used to conduct such preliminary inquiries within a four week period from notification of the report to the Managing Director, where possible.

Where a person is identified as being suspected of possible wrongdoing, but preliminary inquiries determine that the suspicion is baseless or unfounded and that no formal investigation is warranted, then the Eligible Whistleblower will be informed of this outcome (where possible) and the matter laid to rest. The Managing Director (or the Chair, if that report concerns the conduct of the Managing Director) will determine whether or not the person named in the allegation should be informed that a suspicion was raised and found to be baseless upon preliminary review. This decision will be based on a desire to preserve the integrity of a person so named, so as to enable workplace harmony to continue unfettered and to protect the Eligible Whistleblower where it is a bona fide disclosure.

Terms of reference for any formal investigation will be drawn up in consultation with the Managing Director (or the Chair, if that report concerns the conduct of the Managing Director) to clarify the key issues to be investigated. An investigation plan will be developed to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the allegation(s) and sufficient resources are allocated. The person or persons conducting the investigation shall be as far as possible unbiased. Best endeavours will be used to conduct such investigation within a four week period from the conclusion of any preliminary inquiries or from notification of the report to the Managing Director (whichever occurred last), where possible.

Where an investigation does not substantiate the report, the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the report must be handled confidentially.

The principles of procedural fairness (which include granting a fair hearing to all parties, allowing witnesses and cross examination, ensuring that all relevant information is collected and considered, and acting without bias and in good conscience) will be observed. In particular, where adverse comment about a person is likely to be included in a report, the person affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised and any action taken by the AWRI. In addition the investigation will follow the principles of fair treatment set out in the AWRI's Code of Conduct and its Fair Treatment, Bullying and Grievance Resolution Policy and Procedure.

Strict confidentiality will be maintained during the investigative process. All information obtained will be properly secured to prevent unauthorised access. All relevant witnesses will be interviewed and documents examined. Contemporaneous notes of all discussions, phone calls and interviews will be made.

A report will be prepared when an investigation is complete, which will include:

- the allegations;
- a statement of all relevant findings of fact and the evidence relied upon in reaching any conclusions;
- the conclusions reached (including the damage caused, if any, and the impact on the AWRI and other affected parties) and their basis;
- recommendations based on those conclusions to address any wrongdoing identified and any other matters arising during the investigation.

Unless the disclosure relates to the Managing Director, this report will be considered by the Managing Director, who will determine appropriate actions to be taken or refer the matter to the AWRI Board of Directors for further consideration.

Subject to considerations of the privacy of those against whom the allegations are made and customary practices of confidentiality, the Eligible Whistleblower (where possible) will be kept informed of:

- relevant progress of an investigation;
- relevant outcomes of an investigation.

5.8 Protections and support for Eligible Whistleblowers

The AWRI is committed to supporting and protecting the rights of whistleblowers who report Disclosable Matters. An Eligible Whistleblower who makes a report meeting all the requirements set out in this Policy will qualify for a number of protections which include:

- the Eligible Whistleblower will not be subject to any civil, criminal or administrative liability (including disciplinary action) for making the report. However, this protection does not grant immunity for any misconduct the Eligible Whistleblower has engaged in that is revealed in their report;

- no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the Eligible Whistleblower on the basis of the disclosure; and
- if the disclosure is made to ASIC, APRA or prescribed Commonwealth authority, or in relation to a public interest disclosure or emergency disclosure, the information is not admissible in evidence against the Eligible Whistleblower in criminal proceedings or proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

The AWRI will not tolerate any form of conduct that causes detriment, or constitutes the making of a threat to cause detriment, to an Eligible Whistleblower who has made a report, or to a person who is subjected to such conduct, because of the belief or suspicion that they have made a report. In any such circumstances the AWRI will follow the principles of fair treatment set out in the AWRI's Code of Conduct and its Fair Treatment, Bullying and Grievance Resolution Policy and Procedure.

Employees found to have caused, or threatened to cause, detriment to an Eligible Whistleblower may be subject to disciplinary action including, in serious cases, dismissal.

An Eligible Whistleblower can seek compensation and other remedies through the courts if they have suffered loss, damage or injury as a result of making a report and the AWRI failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

Detriment may include (but is not limited to):

- dismissal of an Employee;
- injury of an Employee in his or her employment;
- alteration of an Employee'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 person;
- harm or injury to a person, 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.

Actions that do not amount to detriment may include (but are not limited to):

- administrative action that is reasonable for the purpose of protecting an Eligible Whistleblower from detriment, for example moving an Eligible Whistleblower who had made a report about their immediate work area to another area to prevent them from detriment; and
- managing an Eligible Whistleblower's unsatisfactory work performance, as long as the action is pursuant to the AWRI's Managing Performance Procedure.

If an Eligible Whistleblower believes that they have suffered detriment as a result of having made a report under this Policy, or a belief or suspicion that they have made a report under this Policy, the Eligible Whistleblower should use the same reporting system as set out under section 5.5 of this Policy.

All Employees and their families have access to the AWRI's Employee Assistance Program and Eligible Whistleblowers are encouraged to use this program if needed. Eligible Whistleblowers should also seek independent legal advice on these, and other whistleblowing matters.

Eligible Whistleblowers may still qualify for protection even if their Disclosable Matter is consequently discovered to be incorrect.

5.9 Matters to which this Policy does not apply

This Policy is intended to complement, but not replace, the AWRI's usual reporting avenues for raising issues of concern (for example, by talking to the relevant manager). This Policy (and specifically the protections afforded by the *Corporations Act*) do not apply to personal work-related grievances that do not relate to a Disclosable Matter, unless the grievance:

- contains information about a Disclosable Matter as well (that is, it is a mixed report);
- concerns a breach by the AWRI of employment or other laws punishable by at least 12 months imprisonment, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggest misconduct beyond the Eligible Whistleblower's personal circumstances;
- involves detriment caused or a threat made to an Eligible Whistleblower.

Complaints regarding work health and safety, should where possible be made through the AWRI's established work health and safety reporting procedures. Grievances are to be addressed through the grievance resolution process outlined in the Fair Treatment, Bullying and Grievance Management Policy and Procedure.

The protections outlined in this Policy and under legislation apply when a report of misconduct is made with reasonable grounds to believe it is true. The protections are not available where the report is:

- trivial or vexatious in nature with no substance. This will be treated in the same manner as a false report and may itself constitute wrongdoing;
- unsubstantiated allegations which are found to have been made maliciously, or while knowing them to be false. These will be viewed seriously and may be subject to disciplinary action that could include dismissal, termination of service or cessation of a service or client relationship.

5.10 Publication of Policy

This Policy will be made available to Employees, officers, Contractors, consultants, Suppliers, volunteers and other potential Eligible Whistleblowers by:

- publishing the Policy on the AWRI's intranet (currently referred to as The Hub);
- publishing the Policy on the AWRI's website at www.awri.com.au ;
- providing a copy (or access to a copy) of the Policy to new Employees; and
- providing a copy on request.

6. Related policies and procedures

AWRI Code of Conduct
EMG Charter
Employee Assistance Program Procedure
Fair Treatment, Bullying and Grievance Management Policy and Procedure
Work Health and Safety Policy

7. References

ASIC Regulatory Guide 270 Whistleblower Policies
Corporations Act

Schedule 1 – Contact details for Eligible Recipients

Eligible Recipient	Contact details
Whistleblower Protection Officer	<p>Shiralee Dodd, Company Secretary</p> <p>By emailing a report to whistleblowing@awri.com.au</p> <p>By telephoning (08) 8313 6600 and asking for the Whistleblower Protection Officer</p> <p>By posting a report to: The Australian Wine Research Institute Ltd Whistleblower Protection Officer PO Box 197 Glen Osmond SA 5064</p>
Managing Director	<p>Mark Krstic</p> <p>By emailing a report with whistleblowing as the subject matter to Mark.Krstic@awri.com.au</p> <p>By telephoning (08) 8313 6600 and asking for the Managing Director</p> <p>By posting a report to: The Australian Wine Research Institute Ltd Managing Director- Private and Confidential PO Box 197 Glen Osmond SA 5064</p>
Chair of the Board	<p>Kiaran Kirk</p> <p>By emailing a report with whistleblowing as the subject matter to Kiaran.Kirk@awri.com.au</p> <p>By posting a report to: The Australian Wine Research Institute Ltd Chair of the Board- Private and Confidential PO Box 197 Glen Osmond SA 5064</p>