

# WHISTLEBLOWER POLICY

Approved: 28th May 2024

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## 1. Policy overview

- 1.1 Swimming NSW is committed to maintaining a high level of legal, ethical and moral behaviour in governance and operational standards.
- 1.2 Swimming NSW encourages individuals to disclose suspected misconduct, without fear of detriment, where concerns about serious instances of misconduct are supported by reasonable grounds.
- 1.3 Swimming NSW is required to observe (and this policy complies with) the requirements of any applicable legislation regarding the protection of whistleblowers, including those of the Corporations Act 2001 (Cth) and the Taxation Administration Act 1953 (Cth).
- 1.4 This policy forms part of Swimming Australia's integrity framework.
- 1.5 This policy and any revisions to it from time to time are available to officers and employees from the Chief Executive Officer or his/her authorised delegate

## 2. Purpose

- 2.1 The purpose of this policy is to facilitate an environment in which the reporting of any instances of suspected misconduct, or of an improper state of affairs or circumstances in relation to Swimming NSW or its operations, is encouraged without fear of detriment.
- 2.2 In addition to ensuring Swimming NSW meets its legal and regulatory obligations, this policy intends to help deter wrongdoing, encourage more disclosures of wrongdoing, and ensure both disclosures, and individuals who disclose, are dealt with appropriately and fairly.
- 2.3 The policy furthers this purpose by outlining:
  - a) the types of disclosures which qualify for protection;
  - b) to whom disclosures should be made;
  - c) how *eligible whistleblowers* will be supported and protected;
  - d) how the company will ensure fair treatment of employees mentioned in the disclosures; and
  - e) how disclosures of misconduct will be investigated.

## 3. Protected disclosures

### *What is a protected disclosure?*

- 3.1 A **protected disclosure** is when an **eligible whistleblower** makes a disclosure of information relating to a **disclosable matter** directly to an **eligible recipient**.
- 3.2 A person who makes a *protected disclosure* will be subject to the protections under the *Corporations Act 2001* and as outlined in this policy.
- 3.3 It is important to understand, not all disclosures will constitute a **protected disclosure**. Before making a disclosure, an individual should consider whether they wish to seek independent legal advice to assist them to determine whether it will be a protected disclosure (and therefore provide them with the whistleblower protections under this policy and the law).
- 3.4 Where a **protected disclosure** is made, the protections under the *Corporations Act 2001* only apply to the **eligible whistleblower** (and not to other individuals who may be affected by or referred to within the **protected disclosure**).
- 3.5 Persons wishing to make a disclosure can obtain additional information about the process and protections relating to whistleblowing before making a disclosure by contacting the General Manager of People & Services (**Whistleblower Officer**).

## Who is an eligible whistleblower under this policy?

- 3.6 This policy only applies to disclosures made by individuals who are, or have been:
- a) officers, employees and contractors of Swimming NSW;
  - b) an individual who supplies services or goods to Swimming NSW (whether paid or unpaid);
  - c) an employee of a person or entity who supplies services or goods to Swimming NSW (whether paid or unpaid);
  - d) a relative or dependant of any of the persons listed above.

(when making a *protected disclosure*, each of these is a **whistleblower**).

## What is a disclosable matter?

- 3.7 A disclosure of information concerns a *disclosable matter* where a person has objectively reasonable grounds to suspect that the information indicates:
- a) misconduct<sup>2</sup> or an improper state of affairs in relation to Swimming NSW or any of its related bodies corporate<sup>3</sup>; or
  - b) conduct by an officer or employee of Swimming NSW or any of its related bodies corporate which constitutes an offence against:
    - the Corporations Act 2001;
    - the ASIC Act 2001;
    - the Insurance Act 1973;
    - the Life Insurance Act 1995;
    - any instrument made under an Act referred to above;
  - c) conduct by an officer or employee of Swimming NSW or any of its related bodies corporate which constitutes an offence of any law of the Commonwealth (punishable by imprisonment of 12 months or more); or
  - d) conduct by an officer or employee of Swimming NSW or any of its related bodies corporate which represents a danger to the public or the financial system.
  - e) Examples of this kind, relevant to Swimming NSW' internal administration, could include disclosures about:
    - fraudulent activity including money laundering or misappropriation of funds;
    - serious, unlawful or corrupt use of Swimming NSW' funds or other resources;
    - improper accounting or financial reporting practices;
    - offering or accepting a bribe;
    - engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have, or to be planning to make, a protected disclosure; and
    - systemic practices that pose a serious risk to the health and safety of a person on Swimming NSW' premises.
- 3.8 Sport integrity matters relating to Swimming NSW, such as match-fixing allegations, anti-doping rule violations, betting irregularities, or child or member protection concerns, may or may not be a disclosable matter depending on the particular circumstances. Individuals considering disclosing

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1 "Associate" means a director or secretary of Swimming NSW or of any related body corporate of Swimming NSW, or a person acting in concert with someone who is themselves an "associate" of Swimming NSW.

2 "Misconduct" is defined to include fraud, negligence, default, breach of trust and breach of duty.

3 A "related body corporate" of Swimming NSW is a body corporate that is either the holding company or a subsidiary of Swimming NSW, or a subsidiary of Swimming Australia's holding company. In a standard federated sporting structure, an NSO and SSO are not a holding company / subsidiary.

information under this policy should seek independent legal advice to determine whether the conduct that is intended to be disclosed constitutes a disclosable matter.

Examples of this kind that may arise due to Swimming NSW' interaction with Commonwealth laws, include disclosures relating to:

- a) conduct by an officer or employee of Swimming NSW concerning the National Sports Tribunal, which constitutes an offence under the *National Sports Tribunal Act 2019*, including provision of false or misleading evidence, obstructing the tribunal, intimidating a witness or breaching applicable secrecy provisions; and
- b) conduct by an officer or employee of Swimming NSW that constitutes a breach of the secrecy provisions applicable to entrusted persons under the *Australian Sports Anti-Doping Authority Act 2006*.

3.9 A disclosure of information that is not a *disclosable matter* will not qualify for protection under this policy or the *Corporations Act 2001*.

A disclosure of information is therefore only a disclosable matter if:

- a) it relates to misconduct, or an improper state of affairs or circumstances, in relation to Swimming NSW or its related bodies corporate (and not any other entity); or
- b) it relates to conduct by an officer or employee of Swimming NSW or its related bodies corporate that breaches the above legislation or constitutes an abovementioned offence (and not such breaches if they relate to any other individual).

### *What is not a disclosable matter?*

3.10 This policy is intended for disclosures of information that have significant implications for Swimming NSW, rather than for personal matters.

3.11 This policy does not, therefore, apply to objectively trivial or vexatious matters. Nor is this policy intended to replace or be used instead of other policies and reporting procedures of Swimming NSW, such as those relating to dispute resolution, personal work-related grievances (including matters relating to the discloser's employment or having implications for the discloser personally), equal opportunity, discrimination, harassment or bullying.

3.12 Refer to [s.1317AADA\(2\)](#) of the *Corporations Act 2001* for further examples of personal work-related grievances, and also to Swimming NSW' relevant policies, where applicable.

### **Personal work-related grievances**

3.13 Personal work-related grievances are those about any matter in relation to the discloser's employment, or former employment, having implications for the discloser personally but not having significant implications for Swimming NSW, and not relating to any conduct or alleged conduct about a *disclosable matter*.

3.14 Such grievances will generally not be *disclosable matters* and will therefore generally not qualify for protection under this policy or the *Corporations Act 2001*. Examples of personal work-related grievances include interpersonal conflicts between the discloser and another employee, decisions about the terms of employment, transfer, promotion, suspension or termination of the discloser, or a decision to suspend or terminate the engagement of, or otherwise discipline, the discloser.

3.15 Personal work-related grievances may qualify for protection in certain circumstances.

- 3.17 Accordingly, a disclosure or part of a disclosure which is not or is determined by Swimming NSW not to be, a *disclosable matter* may not be protected by the *Corporations Act 2001* or the terms of this policy.
- 3.18 For personal work-related grievances that are not *disclosable matters*, an employee should Contact the Swimming NSW General Counsel on 03 9910 0700 or [integrity@swimming.org.au](mailto:integrity@swimming.org.au)

## 4. False reporting

This policy applies to disclosures where the discloser has objectively reasonable grounds to suspect wrongdoing, or of an improper state of affairs or circumstances in relation Swimming NSW or its operations. A disclosure may still qualify for protection even if it turns out to be inaccurate. However, where it is shown that a person purporting to be a whistleblower has knowingly or recklessly made a false report of wrongdoing, then that conduct itself will be considered a serious matter and that person may be subject to disciplinary action, which may include dismissal in serious cases.

## 5. Eligible recipients of disclosures

### *Who is an eligible recipient of a disclosure?*

- 5.1 In order to qualify for protection, the disclosure must be made directly to an *eligible recipient*. Swimming NSW offers several reporting options for making a disclosure internally. Protections apply to internal as well as external disclosures. The role of *eligible recipients* is to receive disclosures that qualify for protection.
- 5.2 The *eligible recipients* who have been principally nominated by Swimming NSW to receive such reports in person are:
- a) A person authorised by Swimming NSW to receive whistleblower disclosures. For Swimming Australia, the person authorised by the company to receive whistleblower disclosures are the Protected Disclosure Officers. This is the General Manager of People & Services.
- 5.3 (**Auditor**) Whistleblowers may also make a disclosure to internal or external auditors (including any member of the audit team) of Swimming NSW.
- 5.4 (**Relevant regulator**) Where necessary, disclosures may also be made to ASIC, APRA, the Commissioner of Taxation or another Commonwealth body prescribed by regulation (the **Regulator**) by following the process prescribed on the Regulator's website. Disclosures made to the Regulator will be *protected disclosures*.
- 5.5 (**Lawyer**) Any disclosure of information, including information that does not relate to a *disclosable matter*, made to a lawyer for the purpose of obtaining legal advice or legal representation in relation to the discloser's rights at law will also be a *protected disclosure*.
- 5.6 (**Public interest disclosure**) In certain circumstances, 90 days after an individual has made a disclosure in accordance with this policy to the Regulator, the discloser may give limited disclosure of the matter to a member of Parliament or a journalist, provided that:
- a) the discloser has reasonable grounds to believe that:
    - no action is being, or has been, taken to address the matters they raised in their report;
    - the making of a further disclosure would be in the public interest; and
  - b) before making the further disclosure, the discloser gives written notice to the same Regulator, identifying the previous disclosure and stating they intend to make a public interest disclosure.
- 5.7 Such a step is a serious matter and, to ensure the discloser is protected by law, the discloser should take independent legal advice or consult with Swimming NSW' Whistleblower Officer before taking any such step.
- 5.8 (**Emergency disclosure**) In certain circumstances an individual may give limited disclosure of the matter to a member of Parliament or a journalist, provided the discloser has:

- a) made a disclosure to the Regulator in accordance with this policy;
- b) reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and
- c) given notice to the same Regulator identifying the discloser's previous disclosure and stating their intention to make an emergency disclosure.

- 5.9 The information disclosed in an emergency disclosure must be no greater than is necessary to inform the journalist or member of Parliament of the substantial and imminent danger.
- 5.10 Such a step is a serious matter and, to ensure the discloser is protected by law, the discloser should take independent legal advice or consult with Swimming NSW Whistleblower Officer before taking any such step.

## Anonymous disclosures

- 5.11 A disclosure can be made anonymously to any of the *eligible recipients* listed in this policy and still be protected by this policy and the *Corporations Act 2001*. However, this may make it difficult to investigate the disclosed matter. Swimming NSW encourages disclosers to provide their full names. If a discloser wishes to disclose anonymously, the discloser should provide sufficient information to allow the matter to be properly investigated. Swimming NSW encourages the discloser to provide an anonymous email address or other adopted method as a confidential communication channel through which questions can be asked and information provided, which may also be done prior to a disclosure being made.
- 5.12 If a disclosure is made from an email address from which the discloser's identity cannot be determined, and the discloser does not identify themselves in the email, Swimming NSW will treat it as an anonymous disclosure.
- 5.13 Communication through the channels can be done within or outside of business hours. A discloser may choose to adopt a pseudonym for the purpose of the disclosure and can choose to remain anonymous throughout the entire process, including after the investigation has been finalised.

## 6. Protection of whistleblowers

### How will whistleblowers be protected?

Swimming NSW is committed to protecting those who make a disclosure in accordance with this policy.

#### Identity protection (confidentiality)

- 6.1 To the extent consistent with our legal requirements, upon the making of a *protected disclosure* under this policy, Swimming NSW will not disclose any information that would suggest or reveal the identity of the whistleblower, without first obtaining their consent.
- 6.2 A whistleblower's identity may be disclosed without consent to ASIC, APRA, a member of the Australian Federal Police or to a lawyer for the purpose of obtaining legal advice or representation in connection with the operation of the whistleblower laws.
- 6.3 Subject to above, without the whistleblower's consent, it is illegal for a person to identify or disclose information that is likely to lead to the identification of the discloser. In circumstances where consent to disclose the whistleblower's identity has not been provided, Swimming NSW may disclose information that is not the identity of the whistleblower and is reasonably necessary for the investigation, where all reasonable steps have been taken to reduce the risk the whistleblower will be identified as a result of the disclosure.

#### Protection of records

- 6.4 Swimming NSW will take reasonable precautions to securely store any records relating to a disclosure and only permit access to authorised persons who are directly involved in the managing of the disclosure and subsequent investigation.

- 6.5 Whistleblowers are assured that an unauthorised release of information in breach of this policy will be regarded as a serious matter.

### **No criminal or civil liability**

- 6.6 The fact that a person has made a protected disclosure will not give rise to any civil, criminal or administrative liability (including disciplinary action) on the part of the discloser, and the fact of making the disclosure and its content is not admissible against the whistleblower in criminal or civil proceedings.
- 6.7 However, the whistleblower can still be pursued for having made a false disclosure and is not granted immunity in connection with the discloser's own conduct that is revealed by the matters highlighted in the disclosed information (i.e. the discloser's own conduct in the misconduct, improper affairs or other circumstances which are revealed by the protected disclosure).
- 6.8 If indicated in the relevant policy of Swimming NSW, a whistleblower may be eligible for reduced sanctions in response to their breach of applicable policies of Swimming NSW, where they have made a protected disclosure under this policy.

### **No breach of contract or enforcement of other rights**

- 6.9 Swimming NSW will not take (and the law prohibits any other person from taking) any action under a contract to which a whistleblower is a party (including to terminate a contract on the basis that the disclosure is a breach of contract) or seek to enforce any other right against a discloser, on the basis of the protected disclosure.

### **Protection from detriment**

- 6.10 Swimming NSW will endeavour to protect whistleblowers from any detriment arising directly from their disclosure or proposed disclosure, whether or not such a disclosure has actually been made. Conduct by any person giving rise to detriment or the threat of detriment to an actual or intended whistleblower may be a criminal or civil offence at law in certain circumstances and will be regarded as a serious matter.
- 6.11 In certain circumstances, a whistleblower (or any other employee or person) can seek compensation and other remedies through the courts if:
- a) they suffer loss, damage or injury because of a disclosure; and
  - b) Swimming NSW failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.
- 6.12 Detrimental actions include, but are not limited to:
- a) dismissal of an employee;
  - b) injury of an employee in his or her employment;
  - c) alteration of an employee's position or duties to his or her disadvantage;
  - d) discrimination between an employee and other employees of Swimming NSW;
  - e) harassment or intimidation;
  - f) physical or psychological harm;
  - g) damage to a person's property;
  - h) damage to a person's reputation;
  - i) damage to a person's business or financial position;
  - j) repeated failure to select an individual;
  - k) a reduction in future contract value;
  - l) removal of coaching and other financial and non-financial support; and
  - m) any other damage to a person.
- 6.13 Actions that are not detrimental conduct include administrative action that is reasonable for the purpose of protecting a discloser from detriment, and managing a discloser's unsatisfactory work performance, if the action is in line with Swimming NSW' performance management framework.



- 6.14 Swimming NSW will provide education and training for *eligible recipients*, persons undertaking investigations of disclosures and other officers and employees to help them understand their obligation to protect whistleblowers from detriment.
- 6.15 An actual or intended whistleblower of Swimming NSW who is subjected to detrimental treatment should inform an officer or senior manager immediately. If the matter is not remedied, it should be disclosed in line with this policy where it will be dealt with as a separate matter.
- 6.16 Whistleblowers are encouraged to take independent legal advice in relation to compensation and other remedies available under the *Corporations Act 2001*.

## 7. Investigation of the disclosure

### *What does an investigation look like?*

- 1.1 All disclosures covered by this policy will be taken seriously and handled sensitively and fairly. Swimming NSW will generally direct the matter to the Whistleblower Officer who will attempt to ensure all *protected disclosures* are investigated as soon as reasonably practicable. Where appropriate the discloser will be kept informed as to the progress of the investigation.
- 1.2 Swimming NSW will investigate disclosures covered by this policy in an objective, fair and appropriate manner, which may necessitate different approaches depending on the circumstances of each disclosure. Swimming NSW reserves the right to use both internal and external resources to investigate a disclosure or part of it.

### Assessment

- 1.3 As a first step in the investigation process, normally Swimming NSW will assess a disclosure to determine whether or not it falls within the scope of this policy. If it does, the following steps will normally apply to the investigation. If it does not, the matter will not be investigated, and the discloser will be advised of that fact. In that latter case, the discloser may be directed to another appropriate person or section within the organisation such as the discloser's direct supervisor or overall manager, the General Manager of People & Services or the Chief Executive Officer.
- 1.4 For disclosures assessed to be within the scope of this policy, Swimming NSW will advise the whistleblower of the support available to the whistleblower and emphasise to the whistleblower the importance of confidentiality.
- 1.5 Swimming NSW will ask the whistleblower if the whistleblower consents to the disclosure of their identity for the purposes of the investigation. Swimming NSW will explain to the whistleblower the steps Swimming NSW has in place to take all reasonable steps to reduce the risk that the whistleblower will be identified as the result of the disclosure. If the whistleblower consents, Swimming NSW will keep a written record of that consent. If the whistleblower does not consent, Swimming NSW will also record that fact and advise the whistleblower that Swimming NSW will not disclose the identity of the whistleblower.
- 1.6 In circumstances where consent has not been provided, Swimming NSW will advise the whistleblower that it may disclose information that is not the identity of the whistleblower where it is reasonably necessary for the investigation and where all reasonable steps have been taken to reduce the risk the whistleblower will be identified as a result of the disclosure. Reasonable steps Swimming NSW may take include redacting personal information likely to lead to identification, storing records securely, and providing eligible recipients, persons undertaking investigations and others with appropriate regular education and training on their obligations. Whistleblowers who wish to remain anonymous can refuse to answer questions they feel could reveal their identity.

### Investigation steps

- 1.7 As a general guide and subject to the particular circumstances applying to the disclosure, the steps in the investigation process will normally include the following:
  - a) interview the whistleblower to obtain relevant information;
  - b) interview any alleged wrongdoer to obtain a response to the disclosure in so far as it relates to the alleged wrongdoer;
  - c) interview any relevant witnesses regarding relevant matters arising from the disclosure;

- d) review any documents or other material relevant to the disclosure;
- e) if necessary, conduct further interview/s with the whistleblower to obtain further information or a response to material arising from the investigation; and
- f) if necessary, conduct further interview/s with any alleged wrongdoer regarding further material arising from the investigation.

- 1.8 Interviews need not be conducted face to face. All relevant material including interviews and documents obtained during the investigation is then considered and a report prepared.
- 1.9 The report will make findings of fact and determine whether a disclosure has been substantiated or not substantiated, in whole or part. The report may also include recommendations arising from any factual findings.

## Timing

- 1.10 Swimming NSW aims, where practicable, to finalise investigations of disclosures within 90 days of the date the disclosure is first made. Where finalisation is not practicable, however, Swimming NSW will take all reasonable steps to ensure that significant progress is made in relation to a disclosure within 90 days of the date the disclosure is first made.
- 1.11 Swimming NSW will take reasonable steps to keep the whistleblower informed (including through confidential communication channels used) of the progress of an investigation of their disclosure. The frequency of updates and timeframe will vary according to the nature of the disclosure, however updates will usually be made during the three key stages of the process: when the investigation has begun, when it is in progress and after it has been finalised.
- 1.12 A non-binding example diagram of the process that may be used when responding to a *protected disclosure*, is contained in the schedule to this policy.

## Reporting of investigation findings

- 1.13 At the conclusion of the investigation, the findings may be reported to the Chief Executive Officer. Where appropriate, the whistleblower will be informed of the outcome of the investigation.

# 8. Fair treatment

- 8.1 Swimming NSW will ensure fair treatment of employees mentioned or implicated in a *protected disclosure* within the meaning of this policy, or to whom such disclosure relates (**Relevant Employee**) by applying the following principles.

## Confidentiality

- 8.2 To the extent practicable, the identity of a Relevant Employee will be kept confidential during the investigation of a *protected disclosure* relating to that person.

## Impartiality

- 8.3 An investigator appointed to investigate a *protected disclosure* will act impartially and without bias in conducting the investigation. An investigator must declare any material personal interest the investigator has in any matter relevant to the investigation for which the investigator has responsibility, immediately to Swimming NSW. The investigator must then take no further part in the investigation unless directed otherwise (other than to provide relevant material or information by way of a handover to a new investigator or to take any necessary incidental action for that purpose).

## Fair process

- 8.4 An investigation into a *protected disclosure* will follow a fair process including:
- a) informing a Relevant Employee of the substance of a protected disclosure, as far as it applies to the Relevant Employee;
  - b) giving a Relevant Employee a reasonable opportunity to respond to any matter referred to above, before the investigation is finalised;

- c) informing a Relevant Employee of any adverse finding directly affecting the Relevant Employee arising out of the investigation; and
- d) giving a Relevant Employee a reasonable opportunity to respond to any such adverse finding before the report is finalised.

8.5 Any potential disciplinary action against a Relevant Employee arising out of or as a result of an adverse finding in an investigation report under this policy will be dealt with consistently with Swimming Australia's usual practice, policy or procedure relating to a disciplinary action. Relevant policies include, but are not limited to, Swimming Australia's National Integrity Framework and Codes of Conduct.

### **Support**

8.6 Relevant Employees will have reasonable access to support made available by Swimming NSW, such as contact with a nominated person and, where relevant, access to Swimming NSW' Employee Assistance Program (**EAP**) or similar counselling service.

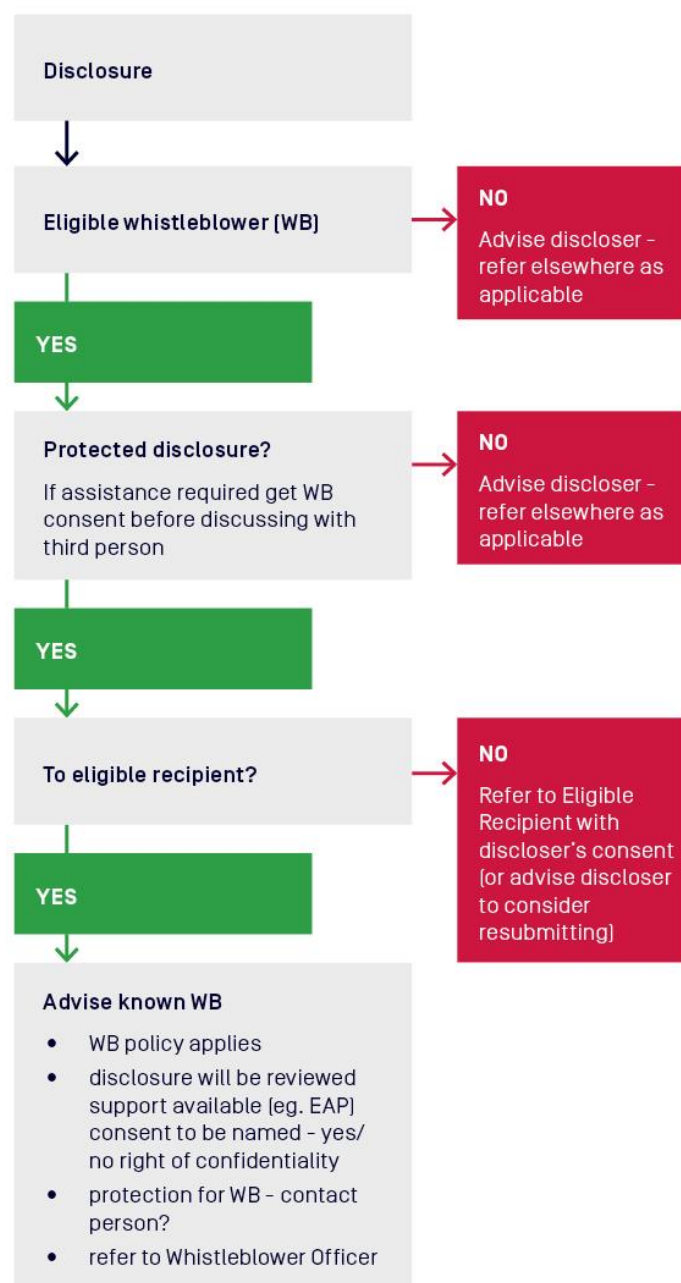
## **9. Amendments to this policy**

This policy may be amended, terminated or replaced at Swimming NSW' discretion.

This policy will be reviewed, and updated as required, on a periodic basis but at least once every two years from its date of adoption.

## 10. Responding to protected disclosures

### TRIAGE



### REVIEW/INVESTIGATE



### A DISCLOSABLE MATTER

Concerns misconduct, or an improper state of affairs or circumstances in relation to the regulated entity, or a related body corporate; or indicates that:

- the regulated entity (or related body corporate) or an officer or employee has engaged in conduct that breaches the Corporations Act, the ASIC Act, the Banking Act, the Data Collection Act, the Insurance Act, the Life Insurance Act, the National Consumer Credit Protection Act, or the Superannuation Industry (Supervision) Act, or regulations made under those laws;
- is an offence against any other law of the Commonwealth punishable by imprisonment for a period of 12 months or more;
- represents a danger to the public or the financial system; or
- is prescribed by regulations.

### ELIGIBLE WHISTLEBLOWERS

Eligible whistleblowers include persons who are or have been:

- Officers and employees of, and contractors of a company
- Individuals who supply services or goods to a company
- Employees of a person or entity who supplies services or goods to a company (whether paid or unpaid)
- Individuals who are associates of a company
- Relatives or dependents of any of the persons listed above.

### ELIGIBLE RECIPIENTS OF A DISCLOSURE

Disclosures may be made to the following eligible recipients of a company:

- its officers and senior managers
- its auditor or a member of an audit team conducting an audit of a company
- its actuary (if it has one)
- a person authorised by it - for example, individuals from its Human Resources team or an authorised, external reporting service approved by the board, or a lawyer.

