



## Whistleblower Policy

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## **Objective and Purpose**

First Super is committed to the highest standards of conduct and ethical behaviour in all our business activities, and to promoting and supporting a culture of honest and ethical behaviour, corporate compliance and good corporate governance.

First Super encourages the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving First Supers' business practice, and will ensure that those persons who make a report can do so without fear of intimidation, disadvantage or reprisal.

The Directors of the Trustee bear ultimate responsibility for efficient and prudent operation of the Fund.

This Policy is intended to ensure the Directors can discharge these duties.

Deliberate failure to comply with this Policy by a service provider may constitute a breach of the service provider agreement.

Deliberate failure to comply with this Policy by an employee may constitute a breach of the employment contract.

A copy of this Policy will be provided to all new and existing employees and will form part of any employment offer, contract or agreement. The Policy will be made available on the First Super intranet site and will also be made available publicly on the First Super web site.

## **What is Whistleblowing?**

Whistleblowing is calling an actual or perceived wrongdoing, omission or error to the attention of a person in authority in circumstances where it appears to be wilfully or negligently ignored. Because whistleblowing can be important in preventing the development of serious problems, whistleblowers are guaranteed confidentiality and protection under this Policy and by law.

## **Who the Policy applies to**

An Eligible Whistleblower, as defined under section 1317AAA of the Corporations Act, is an individual who is, or has been, any of the following in relation to First Super:

- a) An officer or employee;
- b) A supplier of services or goods to First Super (whether paid or unpaid), including their employees (whether paid or unpaid);
- c) An associate of First Super;
- d) A trustee, custodian or investment manager, including their officers and employees;
- e) A supplier of services or goods to the trustee, custodian or investment manager (whether paid or unpaid), including their officers and employees (whether paid or unpaid);
- f) A relative, dependent or spouse of an individual of clauses (a) to (e).

All current and past Eligible Whistleblowers may make a report under this Policy.

## The Relevant Law of Whistleblowing

The *Corporations Act (2001)* (**Corporations Act**) provides a consolidated whistleblower protection regime and requires trustees of registrable superannuation entities to have a whistleblower policy and make the policy available to their employees under Section 1317AI (3) of the Corporations Act.

The *Taxation Administration Act (1953)* (**Taxation Administration Act**) encourages individuals to disclose information about an actual or potential breach of tax law by providing protections under Part IVD consistent with the Corporations Act.

## What is Reportable Conduct

The types of Reportable Conduct are set out under sections 1317AA(4) and (5) of the Corporations Act and includes conduct that:

- is dishonest, fraudulent or corrupt activity, including, but not limited to, money laundering, bribery or other activity in breach of the AML/CTF Policy or Conflict of Interest;
- is illegal activity (such as theft, drug sale or use, violence, harassment or intimidation, criminal damage to property or other breaches of state or federal law);
- is unethical or in breach of policies (such as dishonestly altering company records or data, adopting questionable accounting practices or wilfully breaching First Super's Code of Conduct or other policies or procedures);
- is potentially damaging to First Super, an employee or a third party, such as unsafe work practices, environmental damage, health risks or abuse of property or resources;
- amounts to an abuse of authority;
- may cause financial loss to First Super or damage its reputation or be otherwise detrimental to First Super and First Super member's interests;
- involves harassment, discrimination, victimisation or bullying;
- involves any other kind of serious impropriety; or
- any information that indicates a significant risk to public safety or the stability of, or confidence in, the financial system is also Reportable Conduct even if it does not involve a breach of a particular law

Reportable Conduct can include conduct that may not involve a contravention of a particular law. For example, "suspected illegal activity" may not involve actual unlawful conduct in relation to the entity or a related body corporate but may indicate a systemic issue that the relevant regulator should know about to properly perform its functions,

A disclosure which does not relate to Reportable Conduct will not qualify for protection under the Corporations Act or the Taxation Administration Act (as relevant). However, a disclosure which does not relate to Reportable Conduct but is made to a legal practitioner for the purposes of obtaining legal advice about the operation of the whistleblower regime will be protected under the whistleblower protections of the Corporations Act.

### *Personal work-related grievances*

Disclosures that relate solely to personal work-related grievances, that do not relate to detriment or threat of detriment to the discloser, do not generally qualify for protections under this Policy.

Examples include, but are not limited to:

- An interpersonal conflict between the discloser and another employee;
- Decisions that do not involve a breach of workplace laws, including:
  - Engagement, transfer or promotions of the discloser;
  - Terms and conditions of engagement of the discloser; or
  - A decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser

However, a disclosure about a work-related grievance may qualify for protection where:

- (a) the disclosure also includes information about Reportable Conduct (as defined above)
- (b) the reporter suffers from or is threatened with detriment for making a work-related grievance disclosure;
- (c) the reporter seeks legal advice about the operation of whistleblower protections;
- (d) the disclosure relates to the breach of employment (or other) laws punishable by imprisonment for a period of 12 months or more;
- (e) the disclosure relates to conduct that represents a danger to the public; or
- (f) the disclosure relates to information that suggests misconduct beyond the reporter's own personal circumstances.

#### *Tax affairs*

Eligible Whistleblowers who make a disclosure relating to First Super's tax affairs, including tax avoidance behaviour and other taxation-related impropriety will qualify for whistleblower protections under the Taxation Administration Act as discussed on pages 6-7.

#### **Who is an Eligible Recipient?**

A disclosure of reportable conduct which is not made to a recipient in this section (an "**Eligible Recipient**") will not qualify for protections under the Corporations Act or the Taxation Administration Act.

#### *Internal recipients*

In the first instance, you are encouraged to make an internal report concerning Reportable Conduct under this policy to:

- An officer;
- An auditor of First Super (or member of the auditor's team);
- An actuary of First Super
- A Trustee or any person authorised by the Trustee. People authorised by the Trustee to receive confidential disclosures are:
  - the Co-Chairs;
  - the Chair of the Audit and Compliance Committee;
  - any other Director of the Trustee;
  - the Chief Executive Officer; and
  - the Executive Manager Governance.

You can also make a disclosure by email to: [whistleblower@firstsuper.com.au](mailto:whistleblower@firstsuper.com.au) or by post to:  
[Executive Manager – Governance  
Level 1, 165 Bouverie Street, Carlton, VIC 3053]

You can choose to remain anonymous when making a report by email or post. If you make an anonymous disclosure, you will still qualify for protection under this Policy and the law. However, it may be difficult for us to properly investigate anonymous reports.

### *External reporting*

You may also report to a legal practitioner and to the Australian Securities and Investment Commission (**ASIC**), Australian Prudential Regulation Authority (**APRA**) and other Commonwealth authorities if prescribed under the Corporations Act. However, we encourage you to use our internal processes in the first instance.

### *Reporting tax impropriety*

A disclosure in relation to tax related matters may be made to First Super's internal or external auditors or to a legal representative in addition to any First Super directors, officers or senior management employees.

A disclosure may also be made to the Australian Taxation Office where the individual believes the information to be disclosed may assist the Commissioner of Taxation in performing its duties and functions.

### *Public interest and emergency reporting*

In circumstances where you make a report of reportable conduct to ASIC, APRA or a prescribed Commonwealth authority and:

- you have reasonable grounds to believe the report concerns a substantial and imminent danger to the health of one or more persons or the natural environment; or
- at least 90 days have lapsed since the date of the report and you do not have reasonable grounds to believe that action has been taken in respect of the report, providing you have contacted the person to whom the report has been made to check on the status of the investigation and you have reasonable grounds to believe that making a further disclosure would be in the public interest;

a further report may be made to a member of parliament or journalist but only if the Whistleblower has given prior notice of the intention to make a secondary report to the original recipient of the report.

## **Reporting Procedure**

First Super personnel who have information which they suspect on reasonable grounds, relates to reportable conduct and make a report of that information under this Policy will not be discriminated or disadvantaged in their employment or engagement with First Super, even if the report is subsequently determined to be incorrect or not substantiated. In the first instance, it is preferable that disclosure be made to an Eligible Recipient at First Super. This will help clarify and determine whether the matter comes under this Policy. At all times First Super will treat all disclosures made under this Policy confidential, irrespective of whether the matter qualifies for protection under whistleblower laws or not.

Where a person is apprehensive about approaching any of the above in person, they may make their concerns known by mailing a statement to any of the above (care of First Super) anonymously.

On making a report (verbal or otherwise) to an Eligible Recipient that is not anonymous, the whistleblower will receive:

- an assurance of confidentiality, either verbally or in writing as preferred;
- an assurance that they will not be victimised for making the disclosure. This assurance will be deemed by the Trustee to be contractually binding under whatever existing instrument (whether in writing or not) is most suitable and adapted for the purpose; and
- information on what use will be made of the information provided.

The whistleblower will subsequently receive information on what, if anything, resulted from the disclosure made, in line with the timeframes outlined in the Fund Complaints Policy and the procedures manual attached to this Policy.

The Whistleblower Protection Officer is the Executive Manager Governance and the Whistleblower Investigations Officer is the Compliance Officer.

The Whistleblower Protection Officer reports directly to the CEO and to the Chair of the Audit and Compliance Committee and, if required, directly with the Co-Chair of the Board.

The Whistleblower Investigation Officer reports to the Executive Manager Governance and if required, to the Chair of the Audit and Compliance Committee.

## **The Protections and Procedure for Dealing with Whistleblowing**

### **Protections**

Eligible Whistleblowers who report Reportable Conduct to Eligible Recipients are entitled to certain protections under the Corporations Act. The procedure below has been formulated to ensure, to the maximum extent possible, that those who make a report are treated fairly and do not suffer any disadvantage;

#### (a) Protection of files and records

All files and records created from an investigation will be retained under strict security and unauthorised release of information to someone not involved in the investigation will be a breach of this Policy and, in some cases, the Corporations Act.

Whistleblowers are assured that a release of information in breach of this Policy will be regarded as a serious matter and will be dealt with under First Super's disciplinary procedures.

#### (b) Protection of your identity and confidentiality

Subject to compliance with legal requirements, upon receiving a report under this Policy, First Super will not, nor will any supervisor, manager or Protected Disclosure Officer, disclose any particulars that would suggest or reveal your identity as a whistleblower, without first obtaining your consent. This is a protection under section 1317AAE of the Corporations Act.

Any disclosure that you consent to will be made on a strictly confidential basis. However, the Protected Disclosure Officer is able to disclose the complaint without your consent to ASIC, APRA or the Australian Federal Police.

#### (c) Fairness

If you believe you have experienced detrimental treatment as a result of making a report under this Policy, this may be a form of Reportable Conduct. You should report such allegations to an eligible recipient or to ASIC, APRA or the ATO, as relevant.

Detrimental treatment includes actual or threatened dismissal, demotion, harassment, intimidation, harm, injury, discrimination, disciplinary action, bias, threats or other unfavourable treatment connected with making a report. A discloser can still qualify for protections under this Policy if their disclosure turns out to be incorrect.

(d) Support for whistleblower

First Super is committed to supporting individuals who wish to make a report of reportable conduct under this Policy. If you are considering making a report under this Policy in person, you can ask to do so with a support person present. We will take all reasonable steps to ensure that First Super personnel who make a report of reportable conduct receive appropriate support and engagement.

Additional support is provided via:

- The Employee Assistance Program (EAP)
- Our contracted Human Resources Manager

(e) False or frivolous reports

First Super takes reports of reportable conduct very seriously and disciplinary action may be taken against any employee who makes a false or frivolous report without having reasonable grounds to suspect that reportable conduct has, or will shortly, take place. Therefore, it is very important that whistleblowers who make a report under this Policy do so with reasonable grounds to suspect that someone has engaged in reportable conduct.

Disclosures that are not about Reportable Conduct that are not covered by this Policy because they do not qualify for protections afforded under the Corporations Act or the Taxation Administration Act, however may be protected under other legislation such as the *Fair Work Act (2009)*.

(f) Other protections

If you make a report of Reportable Conduct under this Policy you are entitled to additional protections under section 1317AB of the Corporations Act. These protections ensure that eligible persons that make eligible disclosures are protected from civil, administrative and criminal liability. We also encourage whistleblowers to seek independent legal advice.

In addition, eligible whistleblowers are entitled to seek compensation and other remedies under sections 1317AD and 1317AE of the Corporations Act, for loss, damage or injury suffered as a result of a disclosure or if First Super has failed to take reasonable precautions and exercise due diligence to prevent detrimental conduct from occurring.

### **Trustee's Responsibility**

All aspects of the Trustee's operations are subject to this Policy. For removal of doubt, and despite anything else in any contract or other document, the Trustee and its connected entities expressly and irrevocably:

- Consent to a person notifying any person within this Policy, including APRA, if they believe that a Responsible Person does not meet the Trustee's Fit and Proper criteria and the reasons for that belief.
- Consent to a person notifying APRA if they believe the Trustee has not complied with an applicable Prudential Standard and the reasons for that belief.
- Consent to any person who has held a Responsible Person Position disclosing information or providing documents to APRA relating to their reasons for resignation, retirement or removal.
- Waives any rights they may have under any contract or policy that might otherwise constrain, impede, restrict or discourage, whether by confidentiality clauses, policies or other means, any person from disclosing information or providing documents to APRA and auditor or actuary about matters relevant to the management and

prudential supervision of the Trustee, or from providing documents under their control to APRA, that may be relevant in the context of the management or prudential supervision of the Trustee.

- Asserts that no person acting in accordance with this Policy will be subject to, or threatened with, a detriment because of any notification in purported compliance with the requirements of the Fit and Proper Policy or this Policy.

## CEO

The CEO is responsible for ensuring that directors, staff and contractors are aware of this Policy.

Information on whistleblowing can also be found:

- on the ASIC website at: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/how-asic-handles-whistleblower-reports/>
- on the ATO website: <https://www.ato.gov.au/General/Gen/Whistleblowers/>
- on the APRA website: <https://www.apra.gov.au/information-being-whistleblower-and-making-public-interest-disclosure>

## Related Policies and Documentation

- Policy Calendar
- Fit and Proper Policy
- Conflict of Interest Policy

## Definitions

<b>Term</b>	<b>Definition</b>
APRA	Australian Prudential Regulatory Authority
ASIC	Australian Securities & Investment Commission
Fund	First Super
Relevant Law	Acts, regulations, modification declarations and license conditions applying to the Trustee and / or Fund
Trustee	First Super Pty Ltd

## Investigations Procedure

### Handling a Complaint

Upon receipt of a complaint under this policy, the Whistleblower Protections Officer will immediately de-identify all documentation and assign a pseudonym prior to any investigation commencing. The identity of the complainant will only be known to the Whistleblower Protection Officer (WPO).

Details of the complaint will be forwarded to the Whistleblower Investigations Officer (WIO).

The complaint will be loaded to RIMS (Whistleblower) Risk Management System into the Whistleblower restricted register (Limited access to: CEO; Executive Manager Governance; Compliance Officer and Risk Manager). All actions, investigations and supporting documentation will reside in the risk management system to provide additional security.

During an investigation – the WIO and WPO act independently of each other and the responsibilities for these roles do not reside with one person.



If the complaint relates to either the CEO, Director, WPO or WIO, then the Co-Chair will lead the investigation, with the assistance of external investigators as necessary.

### Investigation

If a formal investigation is warranted, the WIO will lead the investigations. Where the WPO deems necessary, the WIO may use an external investigator to investigate, either in conjunction with the WIO or independently.

All investigation materials shall be stored in RIMS (Protecht) our online risk management system, in a restricted register.

When investigating a whistleblower disclosure, we will ensure procedural fairness to all parties involved and, subject to obligations of confidentiality to the whistleblower, we will ensure that any employees who are mentioned in a disclosure have the opportunity to respond to allegations made against them.

### Updates to Complainant

If requested, the WIO shall provide a progress update to the complainant within the first 14-days. Should the investigation still be underway after 30-days, an update will be provided every 7-days the investigation remains open. Communicating these updates to the complainant will be done in the method the complainant wishes to be communicated with (if applicable).

### Investigation Outcome

The outcome of the investigation must be approved by the Executive Manager Governance prior to being communicated to the complainant. The outcome of the investigation will also be tabled at the next Audit and Compliance Committee meeting.

If the complainant is not satisfied with the outcome provided, they may request an internal review of the complaint, which will be conducted by the Chair of the Audit and Compliance Committee or external service provider. If the reviewing officer concurs with the original complaint outcome, this will finalise the internal investigations process and conclude the process. At any time, the complainant can lodge a complaint with the regulator, such as ASIC, APRA or the ATO for taxation related matters.

### Authorisation

<b>Authorising officer</b>	
Full name:	CEO, Bill Watson

### Document History and Modification

<b>Version</b>	<b>Prepared by &amp; date</b>	<b>Reviewed by &amp; date</b>	<b>Approved by &amp; date</b>
1	Operations and Risk Manager. June 2011	Audit and Compliance Committee June 2011	June 2011
2	Operations and Risk Manager. June 2012	Audit and Compliance Committee 7 August 2012	
3	Operations and Risk Manager. June 2013	Directly to Board	Board 25 June 2013
4	CEO	Audit and Compliance Committee 23 June 2015	Board 7 July 2015

4.1	Operations and Governance Manager March 2016	Minor amendments	n/a
5	Human Resources July 2018	Audit and Compliance Committee 20 Sept 2018	Board 24 Sept 2018
6	Compliance Officer September 2019	Audit and Compliance Committee 12 November 2019	Board 3 December 2019
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