



Spinal Cord Injuries Australia

3.6a Whistleblower Procedure

Owner:	Whistleblower Protection Officer
Approver:	CEO
Date last reviewed:	February 2020

This Whistleblower Procedure supports and should be read in conjunction with 3.6 Whistleblower Policy. In particular, the Policy will provide definition of the key terms such as eligible whistleblower, disclosable matter and eligible recipient.

How to make a disclosure:

To be eligible for the whistleblower protections under the Corporations Act, a disclosure must be:

1. Made by an eligible whistleblower;
2. Relate to a disclosable matter; and
3. Made directly to an eligible recipient

To ensure that an eligible whistleblower has access to best practice whistleblower systems and expertise; SCIA encourages all disclosures - whether a shared identity disclosure in which the discloser identifies themselves or an anonymous disclosure in which the discloser elects to remain unknown - to be made to a third party whistleblower service – Your Call – who have been appointed for this purpose. Disclosers can access Your Call through the following reporting pathways:

- Online 24/7 to www.yourcall.com.au/report
- Phone the Hotline 1300 790 228 available 9am to 12am (midnight) on work days

Further information on the Your Call service including an e-learning module and detailed processes for a shared identity disclosure and an anonymous disclosure are available on the SCIA intranet.

Whilst the procedure will vary dependent upon whether a shared identity or anonymous disclosure is made, Your Call will act as the intermediary or conduit between the whistleblower and SCIA; working with our SCIA Whistleblower Protection Officer to facilitate a best practice process to progress and finalise an investigation whilst maintaining the confidentiality or anonymity of the discloser.

The SCIA Whistleblower Protection Officer (our Head of Shared Services) is our internal eligible recipient and is responsible for protecting and/or safeguarding disclosers, ensuring the integrity of the Whistleblower process, and working with Your Call to facilitate the investigation and resolution of the disclosure whilst keeping all stakeholders including Your Call and the discloser fully informed.

Where a discloser directly contacts the Whistleblower Protection Officer or a SCIA officer or manager in relation to a disclosure; those parties will recommend that the discloser contact Your Call directly.

Should the discloser not want to contact Your Call, the disclosure is to be referred to the SCIA Whistleblower Protection Officer who will assess and where appropriate facilitate the investigation of the disclosure in line with the procedure “Handling and investigating a shared identity disclosure”. Note that SCIA does not have internal capacity to manage an anonymous disclosure.

An external disclosure can be made to an external eligible recipient namely ASIC, APRA or another Commonwealth body prescribed by regulation. Information relating to disclosure to ASIC or APRA is available on the SCIA Intranet and the SCIA public website.

Irrespective of the method of disclosure, the discloser should ensure that their disclosure is factually accurate, complete, based on first-hand knowledge, without material omission and presented in an unbiased fashion. The disclosure should be as detailed as practicable and include:

- The exact nature of the wrongdoing that is believed to have occurred
- When and where the alleged wrongdoing took place, if known
- Who was involved in the alleged wrongdoing
- The names of witnesses who may know information relevant to the alleged wrongdoing
- Evidence and documentation to substantiate the alleged wrongdoing

Legal protections for disclosers:

The following protections under the Corporations Act are available to disclosers who qualify for protection as a whistleblower:

- Identity protection (confidentiality)
- Protection from detrimental acts or omissions
- Compensation and other remedies
- Civil, criminal and administrative liability

Note that all disclosures (shared identity, anonymous or external) offer these protections; provided that the disclosure is made by an eligible whistleblower, relates to a disclosable matter, and is made directly to an eligible recipient.

There is no protection for the discloser should the disclosure not relate to a disclosable matter or should the disclosure prove trivial, vexatious or without substance.

Identity protection (confidentiality):

SCIA has a legal obligation to protect the confidentiality of a discloser's identity. An eligible recipient of a disclosure cannot disclose the identity of a discloser or information that is likely to lead to the identification of the discloser.

The exception to this is where the identity of the discloser is disclosed:

- To ASIC, APRA or the Australian Federal Police
- To a legal practitioner for purposes of obtaining legal advice or representation
- To a person or body prescribed by regulations or
- With the consent of the discloser

The information contained in a disclosure can be disclosed with or without the discloser's consent if:

- The information does not include the discloser's identity
- All reasonable steps have been taken to reduce the risk that the discloser will be identified from the information
- It is reasonably necessary for investigating the issues raised in the disclosure

A discloser can lodge a complaint with SCIA or with a regulator (ASIC, APRA or the ATO) if this confidentiality is breached.

Protection from detrimental acts or omissions:

A person cannot engage in conduct that causes detriment to or threatens to cause 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 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 that are prohibited under the law include:

- Dismissal of an employee
- Injury of an employee to 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, reputation or business or financial position
- Any other damage to a person

Detrimental conduct does not include administrative action that is reasonable to protect a discloser from detriment (moving to another work area or office) or managing a discloser's unsatisfactory work performance. In such cases it is incumbent upon SCIA to ensure that a discloser understand the reason for administrative or management action.

Compensation and other remedies:

A discloser can seek compensation and other remedies through the courts if:

- (a) They suffer loss, damage or injury because of the disclosure
- (b) SCIA fails to take reasonable precautions and exercise due diligence to prevent the detrimental conduct

Disclosers are encouraged to seek independent legal advice in such circumstances.

Civil, criminal and liability protection:

A discloser is protected from the following in relation to their disclosure:

- (a) Civil liability: any legal action against the discloser for breach of an employment contract, duty of confidentiality or any other contractual obligation
- (b) Criminal liability: attempted prosecution against the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure)
- (c) Administrative liability: disciplinary action for making the disclosure

The protections do not grant immunity for any misconduct that a discloser has engaged in that is revealed in their disclosure.

Support and practical protection for disclosers:

Protection in relation to an *anonymous disclosure* is guaranteed through the use of the Your Call case management system and process which ensures that all communication with SCIA is de-identified and

any interaction between SCIA and the discloser is via the Your Call online platform which is moderated by Your Call experts to ensure that identity is not disclosed inadvertently or otherwise.

In relation to a *shared identity disclosure*, Your Call will forward disclosure information to the SCIA Whistleblower Protection Officer, and the Whistleblower Protection Officer will in turn protect the confidentiality of a discloser and protect discloser from detriment through the following measures:

Identity protection (Confidentiality):

Shared Identity disclosures that are forwarded by Your Call to the SCIA Whistleblower Protection Officer will be subject to the following protections:

- All personal information or reference to the discloser will be redacted in all documents
- The discloser will be referred to in a gender neutral context
- The discloser will be asked to help identify certain aspects of their disclosure that could inadvertently identify them
- Disclosures will be handled and investigated by qualified staff (Whistleblower Protection Officer and Whistleblower Investigation Officer)
- People involved in handling and investigating a disclosure will be restricted to an absolute minimum; other people will only be involved to the extent that it is necessary to progress or resolve the handling and investigation of the disclosure; or to protect a discloser from the risk of detrimental acts or omissions
- Where other staff are required to be involved in handling or investigating the disclosure, this will only occur after:
 - Whistleblower consent has been obtained and
 - Staff to become involved are fully briefed on Whistleblower protections and confidentiality requirements including that unauthorised disclosure of a discloser's identity may be a criminal offence

Secure record-keeping and information sharing processes:

- The Whistleblower Protection Officer responsible for protecting discloser identity will ensure that, wherever possible, documents and records relating to a disclosure are limited to electronic copies that are securely held
- Access to information limited to those directly involved in handling/investigating a disclosure
- Where soft copy information is distributed to other staff (cleared for involvement in the disclosure as detailed earlier), the email is to be marked Confidential, sent only to an email address that cannot be accessed by other staff, and a delivery receipt requested
- Where a hard copy of any document be required, this will only be printed to a secure printer not accessible by other staff, will be securely stored whilst needed and will be securely destroyed as soon as it is no longer needed

Protection from detrimental acts or omissions:

The Whistleblower Protection Officer will, upon receiving a disclosure from Your Call, undertake the following actions to protect the discloser from detrimental acts or omissions:

- Assess any likely or possible risks of detriment against the discloser and other persons (who might be suspected to have made a disclosure). Where possible, this assessment will be made with involvement and input from the discloser. Our Risk Management Framework can be used if this is helpful
- Consider support services available to the discloser (Assure Employee Assistance Program, legal or other professional advice) and discuss with the discloser as needed

- Consider and where desirable implement action or changes that could protect the discloser from risk of detriment. Possibilities include flexible work arrangements, performing duties from another work location, reassignment of work duties, or reassignment or relocation of other staff involved in a disclosable matter
- Where required, the discloser's Manager will be made aware of the disclosure and their responsibility to maintain the confidentiality of that disclosure; is briefed and prepared to manage the risks of any detrimental acts or omissions that might occur; and is able to fairly manage the performance of, or taking other management action in relation to, the discloser

The Whistleblower Protection Officer will also advise the discloser how to make a complaint if they have suffered detriment. Such complaint would be made through our Complaint Management and Resolution system; would be investigated by a member of the SCIA Board Governance & Risk Committee who is independent from the Whistleblower process; and the investigation findings would be reported to the SCIA Board.

Where a discloser believes that they have already been subject to detriment, SCIA will:

- Investigate and address the detrimental conduct, taking disciplinary action as warranted
- Consider the suitability of offering the discloser extended leave, alternate training and career pathways, or other compensation and remedies
- Advise the discloser that they are entitled to seek independent legal advice or contact regulatory bodies such as ASIC, APRA or the ATO

Handling and investigating a shared identity disclosure:

A shared identity disclosure is received by a third party external whistleblower service – Your Call – as described in “How to make a disclosure”. Your Call staff will expertly support and advise the discloser and will make an initial assessment of the disclosure including to redirect any disclosures that are not eligible disclosures. For example, an internal grievance would be redirected to the SCIA HR Manager.

Where the disclosure received by Your Call appears upon their initial assessment to be an eligible disclosure, Your Call will arrange for the disclosure to be shared with the SCIA Whistleblower Protection Officer in line with the standard Your Call process (noting that this can vary depending upon whether the disclosure was made online, by email/mail or via the phone hotline).

For a shared identity disclosure, the information provided to SCIA includes the identity of the discloser.

Following the receipt of the disclosure from Your Call, the procedure for the SCIA Whistleblower Protection Officer to handle a shared identity disclosure is as follows:

- Within 24 hours of receipt of the disclosure:
 - Acknowledge receipt of the disclosure
 - Inform the CEO that a disclosure has been received
 - Conduct an initial review to determine the nature of the disclosure and next steps
- Within 48 hours of receipt of the disclosure:
 - Gather further information and clarification as needed from the discloser to assist in assessment of the disclosure
- Within 3 days of receipt of the disclosure:
 - Complete an assessment as to whether the disclosure:

- Qualifies for protection under the whistleblower provisions of the Corporations Act; and
 - Requires a formal, in-depth investigation
- Communicate the above assessment to both the discloser and the CEO

Handling and investigating a shared identity disclosure will be subject to the legal protections, support and practical protection for disclosers as outlined earlier in this procedure.

Where the evidence shows that a disclosure relates to a matter that is trivial or vexatious or should the matter not be a disclosable matter covered by the whistleblower protections; the discloser will be informed that the matter is to be dismissed and not further pursued. The discloser will be referred to other policies (internal grievances, dispute resolution etc) if this is appropriate.

Where the evidence warrants a formal investigation, SCIA will conduct an investigation to substantiate or refute the alleged wrongdoing disclosed by the whistleblower. The procedure to investigate a shared identity disclosure will involve the following steps:

1. The investigation is conducted by the Whistleblower Investigation Officer (our HR Manager); or by an independent person appointed by the Whistleblower Protection Officer should the Whistleblower Investigation Officer not be available; or by an external provider should the disclosure require external expertise or give rise to an actual or perceived conflict of interest
2. The Whistleblower Protection Officer, supported as needed by input from the CEO, will provide an Investigation Plan to the Whistleblower Investigation Officer outlining:
 - a. the nature and scope of the investigation including the key issues to be investigated
 - b. who is able, based on discloser consent, to be contacted as part of the investigation
 - c. any external advice or support that might be required,
 - d. the proposed timeframe for the investigation
3. Where there is potential risk to the discloser, the person alleged to have engaged in the wrongdoing may be stood down from duty pending investigation. Should this be required, no inference of wrongdoing or assumed guilt will apply
4. Principles of natural justice will be observed in the investigation, which will be conducted without bias and any person against whom an allegation has been made will be given the opportunity to respond prior to the investigation being completed
5. The identity of the discloser will remain confidential, subject to reasonableness and the requirements of the law
6. The discloser must consent to information that is likely to lead to disclosure of their identity being provided to the investigation process unless:
 - a. The information does not include the discloser's identity
 - b. Information relating to the discloser's identity has been removed
 - c. It is reasonably necessary to investigate issues raised in the disclosure
7. The Whistleblower Protection Officer will maintain ongoing communication with Your Call, and fully comply with the Your Call process and requirements, at all stages of the investigation
8. Upon the completion of the investigation, the Whistleblower Investigation Officer will prepare and submit a report to the Whistleblower Protection Officer and CEO that summarises the facts and findings of the investigation including whether wrongdoing has been substantiated
9. The Whistleblower Protection Officer and CEO will consider the report and respond appropriately which may include notification to regulatory or enforcement agencies. All whistleblower reports will be shared with the SCIA Board, with a de-identified report to be submitted to the first Board meeting following the completion of the investigation
10. The Whistleblower Protection Officer will keep the discloser up to date as frequently as practicable during the investigation and will, upon completion of the investigation, provide an explanation to the whistleblower regarding the findings of the investigation and any action

that has or will be taken. The discloser will be referred to our Complaint Management and Resolution system should they be unhappy with the investigation process or findings

Handling and investigating an anonymous disclosure:

An anonymous disclosure is received by a third party external whistleblower service – Your Call – as described in “How to make a disclosure”. Your Call will support and advise the discloser, and make an initial assessment of the disclosure including redirection where needed as outlined earlier.

Where an anonymous disclosure received by Your Call appears upon their initial assessment to be an eligible disclosure, Your Call will arrange for the anonymous disclosure to be shared with the SCIA Whistleblower Protection Officer in line with the standard Your Call process to assure anonymity. That is, disclosure information will be de-identified and available only on the Your Call case management platform; and any interaction between SCIA and the discloser will be via an online platform moderated by a Your Call expert.

Your Call will handle an anonymous disclosure and support SCIA to investigate an anonymous disclosure as follows:

1. Discloser to contact, discuss and furnish all information pertaining to the proposed disclosure to Your Call as detailed earlier in the “How to make a disclosure” section of this Procedure
2. Your Call will make an initial assessment as to whether the evidence provided supports that a disclosure is or is likely to be a disclosable matter that qualifies for whistleblower protection under the Corporations Act
3. If the Your Call initial assessment determines that the disclosure is or is likely to relate to a disclosable matter, they will contact the SCIA Whistleblower Protection Officer to alert them to the disclosure and furnish all information provided by the discloser in a manner that ensures anonymity
4. The SCIA Whistleblower Protection Officer will, within 3 days of receipt of information from Your Call, review and complete an assessment of the disclosure to determine whether the disclosure is a disclosable matter
5. Where SCIA determines that the disclosure does not relate to a disclosable matter, this information including relevant explanation for such a determination will be provided to Your Call who will in turn communicate this back to the discloser
6. Where SCIA determines that the disclosure does relate to a disclosable matter, the SCIA Whistleblower Protection Officer will facilitate an investigation in line with the procedure to “Investigate a shared identity disclosure”. However Your Call will act as the conduit between SCIA and the discloser to facilitate any further information, seek discloser consent or communicate with the discloser on all matters including investigation progress or findings

Ensuring fair treatment for individuals mentioned in a disclosure:

SCIA recognises that individuals against whom a report is made must also be supported and we will ensure the fair treatment of staff mentioned in a disclosure including those who are the subject of a disclosure by:

- Handling a disclosure confidentially including secure record-keeping and information sharing processes and restricting those involved in handling or investigating a disclosure to an absolute minimum
- Ensuring that any person involved in handling or investigating a disclosure has been fully briefed on Whistleblower protections and confidentiality requirements
- Providing access to support services available including our Assure Employee Assistance Program or other supports as deemed appropriate

- Ensuring the integrity of the whistleblower investigation process such that the process is objective, independent and fair
- Ensuring that any person mentioned in or subject to an investigation is:
 - Informed as to the substance of the allegations
 - Afforded natural justice and procedural fairness including to be given the opportunity to respond to the allegations before an investigation is completed
 - Informed of the substance of any adverse comments to be included in the investigation report before that report is finalised and submitted
 - Satisfied that his/her defence is set out fairly in any report
- Formally advising the person who is the subject of the disclosure the outcome of the investigation
- Where a person has been mentioned, subject to or otherwise implicated in a disclosure and it has been to their detriment; SCIA will, where possible and appropriate, take action to rectify or make good that detriment

Ensuring policy and procedure is easily accessible:

To ensure that the Whistleblower Policy and Procedure is easily accessible to all SCIA officers, employees, contractors, suppliers and associates; it will be communicated and available as follows:

- SCIA intranet:
 - Current version permanently stored in Employee Information
 - CEO comms to all staff each time the Policy and Procedure is reviewed and updated
 - Periodic (six monthly) promotion/reminder
- Loaded onto our public website
- Included in our standard Induction process
- Team meetings:
 - Included in Department meetings twice per year
 - Regular and informal reinforcement by Managers to promote whistleblower culture
- Training:
 - Formal training for the Whistleblower Protection Officer and Whistleblower Investigation Officer, and other staff as needed
 - Formal briefing provided by above Officers for any person involved or likely to be involved in a whistleblower investigation