



## WHISTLEBLOWER POLICY OF PROBUS SOUTH PACIFIC LIMITED

### 1. INTRODUCTION

Probus South Pacific Limited ABN 38 726 423 979 ('the Company') is committed to providing a safe and secure means of disclosing wrongdoing and encouraging those who are aware of potential wrongdoing to have the confidence to speak up, without fear of reprisal.

This policy is an important tool for helping the Company to identify wrongdoing that may not be uncovered unless there is a safe and secure means for disclosing wrongdoing.

### 2. PURPOSE

The purpose of the policy is to provide a whistleblower framework for the Company which aims to:

- (a) ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported;
- (b) ensure disclosures are dealt with appropriately and on a timely basis;
- (c) provide transparency around the Company's framework for receiving, handling and investigating disclosures;
- (d) encourage more disclosures of wrongdoing; and
- (e) help deter wrongdoing.

This policy is intended to complement the statutory protections and provisions for whistleblowers and does not affect the statutory rights of any disclosers.

### 3. DEFINITIONS

**Act** means the *Corporations Act 2001* (Cth).

**ASIC** means the Australian Securities and Investment Commission.

**ATO** means the Australian Taxation Office.

**Board** means the Board of Directors of the Company.

**Chair** means the chair of the Board.

**Company** means Probus South Pacific Limited.

**Eligible Recipient** means a person or authority described in clause 7.1.

**Eligible Whistleblower** means an individual described in clause 5.1.

**Emergency Disclosure** has the same meaning as "emergency disclosure" in section 1317AAD of the Act.

**Officer** means a person who is a member of the Board or is the Company Secretary.

**Protected Disclosure** means a disclosure of information described in clause 6.

**Public Interest Disclosure** has the same meaning as "public interest disclosure" in section 1317AAD of the Act.



**Whistleblower Protection Officer** means the General Counsel of the Company or such other person authorised by the Company to receive disclosures that may qualify for protection under the Act.

Other expressions used in this policy but not defined above have the same meanings as they are given in Part 9.4AAA of the Act.

## 4. SCOPE

4.1 This policy applies to the Company and all Eligible Whistleblowers and Eligible Recipients of disclosures under this policy.

4.2 Eligible Whistleblowers qualify for protection as a whistleblower under the Act if:

- (a) they have made a Protected Disclosure directly to an Eligible Recipient or to ASIC or another Commonwealth body prescribed by regulation;
- (b) they have made a disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the Act; or
- (c) they have made an Emergency Disclosure or Public Interest Disclosure.

## 5. WHO THIS POLICY APPLIES TO

5.1 This policy applies to anyone who makes a disclosure that qualifies for protection and is considered to be an Eligible Whistleblower. For the purpose of this policy, an Eligible Whistleblower is an individual who is, or has been, any of the following persons:

- (a) an employee, whether full-time, part-time or casual, of the Company;
- (b) an Officer (such as a director or company secretary) of the Company;
- (c) an individual who supplies services or goods to the Company (whether paid or unpaid);
- (d) an employee of a person that supplies services or goods to the Company (whether paid or unpaid);
- (e) an individual who is an associate<sup>1</sup> of the Company;
- (f) the spouse, parent or remoter lineal ancestor, child or remoter issue, or brother or sister of an individual listed in paragraphs (a) to (e); and
- (g) a dependant of an individual referred to in any of paragraphs (a) to (e), or of such an individual's spouse.

5.2 If a person is unsure about whether they are an Eligible Whistleblower, they are encouraged to ask the Whistleblower Protection Officer or seek independent legal advice.

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<sup>1</sup> "Associate" is defined in Division 2 of Part 1.2 of Chapter 1 of the *Corporations Act*, particularly in section 11. Relevantly to the Company, an associate is most likely to be a director or secretary of a related body corporate of the Company. "Related body corporate" is defined in section 50 of the *Corporations Act* which states:

Where a body corporate is:

- (a) a holding company of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.

As at 17 December 2019, the Company does not have any related bodies corporate.



## 6. MATTERS THIS POLICY APPLIES TO

- 6.1 For the purpose of this policy, a Protected Disclosure is a disclosure of information to an Eligible Recipient by an Eligible Whistleblower who has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the Company or a related body corporate of the Company.
- 6.2 Information does concern misconduct, or an improper state of affairs or circumstances, in relation to the Company or a related body corporate of the Company if it indicates that Company or a related body corporate of the Company or an officer or employee of the Company or of a related body corporate of the Company has engaged in conduct that:
- (a) constitutes an offence against, or a contravention of, a provision of any of the following:
    - (i) the *Corporations Act 2001*;
    - (ii) the *Australian Securities and Investments Commission Act 2001*;
    - (iii) the *Banking Act 1959*;
    - (iv) the *Financial Sector (Collection of Data) Act 2001*;
    - (v) the *Insurance Act 1973*;
    - (vi) the *Life Insurance Act 1995*;
    - (vii) the *National Consumer Credit Protection Act 2009*;
    - (viii) the *Superannuation Industry (Supervision) Act 1993*;
    - (ix) an instrument made under an Act referred to in any of subparagraphs (i) to (viii); or
  - (b) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
  - (c) represents a danger to the public or the financial system; or
  - (d) is prescribed by the *Corporations Regulations 2001*.
- 6.3 For guidance, matters that would constitute misconduct or an improper state of affairs or circumstances may include:
- (a) dishonesty;
  - (b) fraud, money laundering or misappropriation of funds;
  - (c) offering or accepting a bribe;
  - (d) financial irregularities;
  - (e) failure to comply with, or breach of, legal or regulatory requirements;
  - (f) misleading and deceptive conduct, in particular around accounting or financial reporting practices;
  - (g) corruption;
  - (h) engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure;



- (i) gross mismanagement and/or breaches of administrative procedures; and
- (j) unethical behaviour, bullying and harassment (including sexual harassment).

6.4 This policy does not generally apply to personal work-related grievances and complaints about a person's own employment or situation.

6.5 If a person is unsure about whether a matter they wish to disclose constitutes a Protected Disclosure, they are encouraged to seek independent legal advice.

## **7. WHO CAN RECEIVE A DISCLOSURE**

7.1 To ensure protection under the Act, an Eligible Whistleblower must make a Protected Disclosure under this policy to an Eligible Recipient. Eligible Recipients are:

- (a) an officer or senior manager (such as the Chief Executive Officer) of the Company or a related body corporate;
- (b) an internal or external auditor, or a member of the audit team conducting an audit, of the Company or a related body corporate of the Company;
- (c) an actuary of the Company or a related body corporate of the Company;
- (d) the Whistleblower Protection Officer;
- (e) ASIC;
- (f) for a Public Interest Disclosure or an Emergency Disclosure, a journalist or Commonwealth, State or Territory parliamentarian; and
- (g) if the matter relates to the Company's tax affairs, the Commissioner of Taxation.

7.2 The contact details of the Whistleblower Protection Officer can be found in Appendix 1 of this policy. The Board is to ensure Appendix 1 is maintained and updated as required.

7.3 Disclosures of information by an Eligible Whistleblower to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Act are protected, even if the legal practitioner concludes that the disclosure of information does not relate to a matter that qualifies for protection.

## **8. HOW TO MAKE A DISCLOSURE**

8.1 An Eligible Whistleblower may make a disclosure under this policy by telephone, email or writing directly to an Eligible Recipient. Disclosures may be made at any time, including outside of normal business hours.

8.2 Where appropriate, disclosures are to contain the following details:

- (a) the nature of the alleged conduct;
- (b) the person(s) alleged to be responsible for the conduct;
- (c) the facts which support the person's suspicion that such conduct has occurred, and has been committed by the identified person(s); and
- (d) the nature and whereabouts of any further evidence that would support the allegations, if known.

8.3 Eligible Whistleblowers are encouraged to first make a disclosure to the Whistleblower Protection Officer or to an internal Eligible Recipient. However, if Eligible Whistleblowers



feel uncomfortable making a disclosure internally, or feel it is inappropriate to do so, they may make a disclosure to any of the external recipients named in clause 7.1.

## **9. ANONYMOUS DISCLOSURES**

- 9.1 All disclosures made under this policy are protected under the Act, including those which are made anonymously.
- 9.2 An Eligible Whistleblower may choose to remain anonymous while making a disclosure, during the course of the investigation and after the investigation is finalised. Eligible Whistleblowers may refuse to answer any questions they feel could reveal their identity at any time, including during any follow-up conversations.
- 9.3 An Eligible Whistleblower who wishes to remain anonymous is encouraged to maintain ongoing two-way communication with the Company so that follow-up questions can be asked or feedback given.
- 9.4 If a disclosure comes from an email address from which the person's identity cannot be determined, and the discloser does not identify themselves in the email, it is to be treated as an anonymous disclosure.

## **10. LEGAL PROTECTIONS FOR DISCLOSERS**

- 10.1 Disclosures made in accordance with this policy qualify for the protections under the Act. A brief summary of these protections is provided in Appendix 2. However, they include:
  - (a) protection of any information provided by the Eligible Whistleblower;
  - (b) protection of the identity of the Eligible Whistleblower;
  - (c) protections for the Eligible Whistleblower against legal action; and
  - (d) protections for the Eligible Whistleblower from detrimental acts or omissions.

## **11. SUPPORT AND PRACTICAL PROTECTION FOR DISCLOSERS**

- 11.1 Officers and employees must not:
  - (a) engage in conduct that causes detriment to Eligible Whistleblowers or suspected Eligible Whistleblowers; or
  - (b) threaten to cause detriment to Eligible Whistleblowers or suspected Eligible Whistleblowers.
- 11.2 To the maximum extent practicable, the Company is to seek to protect Eligible Whistleblowers and suspected Eligible Whistleblowers from detriment.
- 11.3 A threat to cause detriment may be express or implied, conditional or unconditional.
- 11.4 Detriment includes:
  - (a) dismissal of an employee;
  - (b) injury of an employee in the employee's employment;
  - (c) alteration of any employee's position or duties to the employee's disadvantage;
  - (d) discrimination between an employee and other employees of the same employer;
  - (e) harassment or intimidation of a person;



- (f) harm or injury to a person, including 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; or
- (j) any other damage to a person.

11.5 As soon as possible upon receiving a disclosure, the Company must adopt measures and mechanisms, where appropriate, to protect Eligible Whistleblowers from detriment such as:

- (a) assessing the risk of detriment against an Eligible Whistleblower or other persons (such as suspected disclosers);
- (b) providing support services (such as counselling);
- (c) developing strategies to help an Eligible Whistleblower minimise and manage stress, or other challenges resulting from the disclosure or its investigation;
- (d) allowing Eligible Whistleblowers to perform their duties from home or another suitable location;
- (e) allowing Eligible Whistleblowers to take leave, if required;
- (f) monitoring for risk of isolation, harassment, conflicts or risk to the Eligible Whistleblower's identity; and
- (g) interventions for protecting an Eligible Whistleblower if detriment has already occurred, including investigating and addressing the detrimental conduct by taking disciplinary action where necessary.

11.6 Eligible Whistleblowers may seek independent legal advice or contact regulatory bodies such as ASIC or the ATO if they believe they have suffered detriment.

11.7 Subject to this policy, an Eligible Whistleblower is protected even if the allegations or concerns prove to be incorrect (although a person who maliciously or dishonestly makes a disclosure may be subject to disciplinary action).

## **12. PROTECTING CONFIDENTIALITY**

12.1 The Company is to treat the details of Eligible Whistleblowers and all disclosures made under this policy by Eligible Whistleblowers with the strictest confidence. The Company may only share this information with those who are involved directly in the investigation of the disclosure unless this would be in breach of the statutory requirements with respect to the confidentiality of Eligible Whistleblowers.

12.2 There may be instances where the Company is required to share the details of Eligible Whistleblowers and their disclosure as part of the Company's legal obligations.

## **13. HANDLING AND INVESTIGATING A DISCLOSURE BY THE COMPANY**

13.1 The Company, upon receiving a disclosure, is to take sensitive, prompt and appropriate action to investigate the alleged conduct.

13.2 The Company must decide whether a preliminary investigation is to be carried out within two weeks of the disclosure being received. The Company must explain any delay beyond this period to the Eligible Whistleblower.



- 13.3 The Chair is to investigate disclosures provided the Chair is not the subject of the allegation, in which case the Board must nominate another person more appropriate to investigate the disclosure. The Chair may elect to refer the disclosure to another member of the Board if the Chair considers it is more appropriate to do so. If the disclosure concerns both the Chair and other members of the Board, then the Board must refer the disclosure to an independent external investigator for investigation.
- 13.4 The Eligible Recipient of a disclosure must direct it to the appropriate person for investigation but only after confirming with the Eligible Whistleblower directly about their willingness for their identity to be disclosed. An Eligible Whistleblower may request their identity remain confidential to the investigator where appropriate.
- 13.5 All investigations must be conducted fairly, with due regard for the nature of the allegation and the rights of the persons involved in the investigation. Investigations are to involve the following process:
- (a) The principles of procedural fairness must be adhered to in all investigations including:
    - (i) an unbiased investigator;
    - (ii) allegations being put to any person against whom they have been made;
    - (iii) that person being given opportunity to respond to the allegations;
    - (iv) decision-making based on evidence and consideration of relevant factors only;
    - (v) a hearing where appropriate; and
    - (vi) verification of asserted facts and inquiry into any disputed facts.
  - (b) Maintenance of confidentiality as far as possible and in accordance with the Eligible Whistleblower's wishes. No disclosures of information are to be made that could reveal the identity of an Eligible Whistleblower without the written consent of the Eligible Whistleblower, unless it is required under the Act.
  - (c) Eligible Whistleblowers are to be asked to provide a verbal or written statement, unless they have made an anonymous disclosure. Eligible Whistleblowers may choose a support person to accompany them through this procedure or any stage of the investigation.
  - (d) The Company must take reasonable steps to keep Eligible Whistleblowers informed of the progress of the investigation of their disclosure and about the protections and support available to them by the Company and under legislation, provided they have not made an anonymous disclosure.
  - (e) Eligible Whistleblowers are to be informed in writing of the outcome of an investigation within 14 days of its completion but they do not have to be informed of the exact disciplinary decisions made, if any.
  - (f) Any person the subject of a disclosure must be informed of the allegations and given reasonable opportunity to respond. Such persons may be suspended or have alternative work arrangements made for them during the investigation, depending on the nature and seriousness of the disclosure.



- (g) The investigator may seek independent legal advice to assist the investigator in any stage of the investigation. This is encouraged for more serious or complicated cases.

13.6 Depending on the nature and seriousness of the disclosure, investigations are normally to be completed within six weeks. Where investigations are expected to take longer, the Eligible Whistleblower is to be informed about the estimated time frame.

13.7 Records of all disclosures and official written reports and evidence related to the disclosure or investigation must be kept. These records must be held securely and maintained by the Chair, provided the Chair is not subject of a disclosure, in which case the Board must nominate another person to hold the records securely.

## **14. ENSURING FAIR TREATMENT OF INDIVIDUALS MENTIONED IN A DISCLOSURE**

14.1 The Company is committed to ensuring the fair treatment of employees who are mentioned in, or the subject of, a disclosure made under this policy.

14.2 Where investigations or other enquiries cannot substantiate an allegation made by an Eligible Whistleblower, the fact an investigation was performed, the results of that investigation and the identity of any person subject of the allegation are to be kept confidential, unless the subject of the disclosure requests otherwise.

14.3 In accordance with any legal requirements, an employee who is the subject of an allegation made by an Eligible Whistleblower has the right to be:

- (a) informed of the disclosure, but this does not include the identity of the Eligible Whistleblower;
- (b) given a reasonable opportunity to respond to the disclosure (either orally or in writing); and
- (c) informed of any findings and decisions with respect to the disclosure.

## **15. ENSURE THE POLICY IS EASILY ACCESSIBLE**

15.1 This policy is to be made available to the Company's internal Eligible Whistleblowers, such as employees and Officers, by:

- (a) holding staff briefing sessions and/or small team meetings;
- (b) posting the policy on the staff intranet or other communication platform, if applicable;
- (c) posting information on staff noticeboards, if applicable;
- (d) setting out the policy in the employee handbook; and
- (e) incorporating the policy in employee induction information packs and training for new starters.

15.2 The Company is to conduct ongoing education and training to all employees and Officers on the whistleblowing procedures and processes under this policy. The training may include:

- (a) information about this policy and related processes and procedures;
- (b) information relating to protecting and supporting disclosers;



- (c) information about matters that are not covered by this policy;
- (d) information on how and where employees can report general employee feedback or personal work-related grievances; and
- (e) practical examples of circumstances where disclosure has led to positive outcomes for the Company and the discloser.

15.3 The Company must publish this policy on its website to ensure all Eligible Whistleblowers have easy access to it. The version of the policy on the Company website and staff intranet must be kept updated.

## **16. REVIEWING AND UPDATING THE POLICY**

16.1 This policy is to be reviewed on a two-year periodic basis by the Board and any issues identified in the effectiveness of the processes and procedures under this policy are to be rectified promptly.



## APPENDIX 1

### Eligible Recipient Contact Details:

| Name and Role <i>(if applicable)</i>   | Contact details  |
|--|--|
| Tony de Govrik<br>General Counsel & Company<br>Secretary<br>Whistleblower Protection Officer | Email: <a href="mailto:adegovrik@iprimus.com.au">adegovrik@iprimus.com.au</a><br><br>Telephone: 02 9953 1057 |



## APPENDIX 2

### Protections for Eligible Whistleblowers under the Act

| Protection                                    | Summary of Protection   |
|---|---|
| Identity Protection (Confidentiality)         | <p>Any information that could lead to the identity of the Eligible Whistleblower is prohibited from being disclosed unless the information disclosed is:</p> <ul style="list-style-type: none"><li>(a) to ASIC or the Australian Federal Police;</li><li>(b) to a legal practitioner;</li><li>(c) to a person or body prescribed by the Corporations Regulations 2001; or</li><li>(d) with the consent of the Eligible Whistleblower.</li></ul> <p>Disclosure with or without the consent of the Eligible Whistleblower is permitted provided that all reasonable steps are taken to reduce the risk of identification of the Eligible Whistleblower.</p>   |
| Protection from Detrimental Acts or Omissions | <p>A person must not engage or threaten to engage in detrimental conduct towards an Eligible Whistleblower who has made or proposes to make a disclosure that warrants protection.</p> <p>Detrimental conduct includes:</p> <ul style="list-style-type: none"><li>(a) dismissal of an employee;</li><li>(b) injury of an employee during their employment;</li><li>(c) modifying an employee's position or role to their detriment;</li><li>(d) discrimination from other employees;</li><li>(e) harassment or intimidation;</li><li>(f) harm, including psychological harm;</li><li>(g) damage to a person's property;</li><li>(h) damage to a person's reputation;</li><li>(i) damage to a person's business or financial position; or</li><li>(j) any other damage to a person.</li></ul> <p>It is criminal offence and civil penalties apply if a person causes or threatens detriment because they believe or suspect someone to have made a disclosure.</p> |



|   |  |
|---|--|
| Compensation and other Remedies                         | <p>An Eligible Whistleblower may seek compensation and other remedies through the courts if:</p> <ul style="list-style-type: none"><li>(a) they suffer loss, damage or injury because of a disclosure; and</li><li>(b) the entity failed to take reasonable precautions to prevent the detrimental conduct;</li></ul>  |
| Civil, Criminal and Administrative Liability Protection | <p>If an Eligible Whistleblower makes a disclosure, they must be protected from:</p> <ul style="list-style-type: none"><li>(a) civil liability, including any legal action;</li><li>(b) criminal liability; and</li><li>(c) administrative liability.</li></ul> <p>However, protection must not extend to an Eligible Whistleblower who has engaged in misconduct.</p> |