

## WHISTLEBLOWER POLICY

---

### 1 Purpose and availability of policy

- a) Hydrogen Mobility Australia Ltd (trading as the Australian Hydrogen Council) is committed to a culture of good commercial practice and highly ethical behaviour.
- b) The Australian Hydrogen Council will comply with its obligations relating to the protection of whistleblowers in the *Corporations Act 2001 (Cth)* (Corporations Act) and the *Taxation Administration Act 1953 (Cth)* (Taxation Administration Act).
- c) This policy deals with issues relating to those employees, officers, volunteers and suppliers who wish to make disclosures with respect to Reportable Conduct pertaining to the Australian Hydrogen Council, and aims to provide clarity on the processes and protections provided by the Australian Hydrogen Council regarding the disclosure of such wrongdoing.
- d) This policy is not intended to address complaints about other matters or personal work-related grievances except as set out under this policy. Complainants should refer to the Australian Hydrogen Council's other policies and documented processes in that regard.
- e) This policy, together with the Australian Hydrogen Council's other relevant policies, is available [here](#) and can also be provided on request (please email [info@h2council.com.au](mailto:info@h2council.com.au)).

### 2 Definitions

In this policy:

- a) **Detrimental Conduct** means any actual or threatened conduct that could cause a detriment as a result of making a disclosure, including but not limited to:
  - i. termination of employment;
  - ii. injury of an employee in his or her employment;
  - iii. alteration of an employee's position or duties to his or her disadvantage;
  - iv. harassment, bullying or intimidation;
  - v. personal or financial disadvantage;
  - vi. unlawful discrimination;
  - vii. harm or injury, including psychological harm;
  - viii. damage to reputation;

- ix. damage to property;
  - x. damage to a business or financial position; or
  - xi. any other conduct that constitutes retaliation,
- b) **Eligible Person** means all current and former officers, employees, volunteers, associates (as defined by the *Corporations Act 2001*) and suppliers (whether paid or unpaid) (including employees) of the Australian Hydrogen Council, and relatives and dependents of any of the foregoing,
- c) **Eligible Recipients** mean the people who may receive disclosures that qualify for protection under the under the Corporations Act (or the Taxation Administration Act, where relevant) and include:
- i. an officer or senior manager of the Australian Hydrogen Council or related body corporate;
  - ii. the internal or external auditor (including a member of an audit team conducting an audit) or actuary of the Australian Hydrogen Council or related body corporate;
  - iii. a person authorised by the Australian Hydrogen Council to receive disclosures that may qualify for protection; and
  - iv. for the purposes of the Taxation Administration Act, a registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*) who provides tax agent services (within the meaning of that Act) or BAS services (within the meaning of that Act) to the Australian Hydrogen Council, a person or body prescribed by regulation and any other employee or officer (within the meaning of the Corporations Act) of the Australian Hydrogen Council who has functions or duties that relate to the tax affairs (within the meaning of section 14ZZT) of the Australian Hydrogen Council.
- d) **Reportable Conduct** means information in relation to the Australian Hydrogen Council or a related body corporate of the Australian Hydrogen Council that concerns misconduct or an improper state of affairs or circumstances. This includes information that indicates any of the following:
- i. illegal conduct (including theft or criminal damage against property);
  - ii. unlawful or corrupt conduct, or an irregular use of company funds;
  - iii. dishonest or fraudulent conduct;
  - iv. negligence, default, breach of trust or breach of duty;
  - v. unethical conduct; or
  - vi. an offence against, or a contravention of, a provision of any of the following:
    - A. the Corporations Act;

- B. the Australian Securities and Investments Commission Act 2001;
  - C. the Banking Act 1959;
  - D. the Financial Sector (Collection of Data) Act 2001;
  - E. the Insurance Act 1973;
  - F. the Life Insurance Act 1995;
  - G. the National Consumer Credit Protection Act 2009;
  - H. the Superannuation Industry Supervision Act 1993; or
  - I. an instrument made under an Act referred to in this definition;
- vii. an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
  - viii. any conduct that represents a danger to the public or the financial system;
  - ix. any conduct that is prescribed by regulation; or
  - x. for the purposes of the Taxation Administration Act, information that indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the Australian Hydrogen Council or an associate and the information may assist the Eligible Recipient to perform functions or duties in relation to the tax affairs of the Australian Hydrogen Council or an associate.
- e) **Whistleblower** means an Eligible Person who makes a disclosure in accordance with, and in the manner described by, this policy that qualifies for protection under the Corporations Act or the Taxation Administration Act.

### 3 Objectives

The objectives of this policy are to:

- a) encourage every Eligible Person to disclose any malpractice, misconduct or conflicts of interest of which they become aware;
- b) provide protection for every Eligible Person who disclose allegations of malpractice, misconduct or conflicts of interest; and
- c) indicate when such disclosures will be investigated.

### 4 Policy

#### 4.1 Whistleblower protection

- a) This policy is designed to give guidance so that honesty and integrity are maintained at all times at the Australian Hydrogen Council.

- b) This policy applies where:
- i. a disclosure of Reportable Conduct is made by a Whistleblower to an Eligible Recipient;
  - ii. a disclosure of Reportable Conduct is made by a Whistleblower to the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) or a Commonwealth authority prescribed by regulations;
  - iii. a disclosure is made by a Whistleblower to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower protections under Part 9.4AAA of the Corporations Act or Part IVD of the Taxation Administration Act; or
  - iv. a Whistleblower has made an emergency disclosure or public interest disclosure under whistleblower protection laws (outlined at section 6).
- c) For the purposes of the Taxation Administration Act, this policy applies where:
- i. a disclosure of Reportable Conduct is made by a Whistleblower to an Eligible Recipient,
  - ii. a disclosure is made by a Whistleblower to the Commissioner of Taxation (ATO) and the Whistleblower considers that the information may assist the ATO to perform its functions or duties under a taxation law in relation to the Australian Hydrogen Council or an associate; or
  - iii. a disclosure is made by a Whistleblower to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part IVD of the Taxation Administration Act.
- d) These disclosures qualify for protection under this policy and whistleblowing laws, being the Corporations Act (or the Taxation Administration Act, where relevant). Disclosures that are not about these matters do not qualify for protection under the Corporations Act or the Taxation Administration Act.
- e) These procedures do not authorise any Whistleblower to inform commercial media or social media of their concern, and do not offer protection to any Whistleblower who does so (unless the disclosure is a public interest disclosure or emergency disclosure).
- f) The Australian Hydrogen Council encourages Whistleblowers to make a disclosure to it in the first instance. This will enable the Australian Hydrogen Council to identify and address wrongdoing as early as possible.
- g) The Australian Hydrogen Council will assess whether a disclosure falls within the intended scope of this policy. The Australian Hydrogen Council has the discretion to determine that a disclosure will not be dealt with under this policy, provided that the disclosure does not fall within the scope of applicable whistleblower laws.
- h) A Whistleblower can still qualify for protection even if the matter that is disclosed turns out to be incorrect.

- i. To the maximum extent practicable, a person who genuinely discloses an allegation or concern about compliance with laws or other standards of behaviour) will be protected from any adverse action (such as dismissal, demotion, suspension, harassment, or other forms of discrimination) because they have raised such allegations. Subject to this policy, a Whistleblower is protected, even if the allegations prove to be incorrect or unsubstantiated (although a person who maliciously or vexatiously makes disclosures or makes false disclosures may be subject to disciplinary action).
- ii. Employees who participate, or assist in, an investigation involving Reportable Conduct will also be protected. Every effort will be made to protect the anonymity of the Whistleblower, however, there may be situations where anonymity cannot be guaranteed. In such situations, the Whistleblower will be informed.

#### **4.2 Conduct that is not reportable**

This policy does not apply to:

- a) personal work-related grievances;
- b) health and safety hazards managed under WH&S law; or
- c) general employment grievances and complaints by a person about their own employment or situation,

however grievances may be afforded protection for Eligible Persons under whistleblower legislation where:

- d) the grievance includes information about Reportable Conduct or forms part of a disclosure concerning Reportable Conduct;
- e) the Eligible Person has suffered, or been threatened with, detrimental treatment for making a disclosure of information for which the person has reasonable grounds to suspect concerns Reportable Conduct; or
- f) it is made by to a legal practitioner for the purposes of obtaining legal advice about the operation of the whistleblower legislation.

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

Personal work grievances are not covered under this policy and may be protected under other legislation, such as the Fair Work Act 2009. Personal work-related grievances are grievances that relate to a Whistleblower's current or former employment or engagement and have, or tend to have, implications for the Whistleblower personally and that do not have broader implications for the Australian Hydrogen Council.

## **5 How to speak up about Reportable Conduct**

- a) Any person who has reasonable grounds to suspect that Reportable Conduct, or a breach of a law or other standard of behaviour has occurred, is encouraged to report that suspicion to an Eligible Recipient.

- b) Only a disclosure made directly to an Eligible Recipient qualifies for protection under the Corporations Act. If an Eligible Person wishes to make a disclosure to, or within, the Australian Hydrogen Council, that person may raise the concern with the Chief Executive Officer by emailing [fsimon@h2council.com.au](mailto:fsimon@h2council.com.au). An Eligible Person may otherwise make a disclosure to any other Eligible Recipient.
- c) All disclosures should provide specific, adequate and pertinent information with respect to, among other things, dates, places, persons, witnesses, amounts, and other relevant information, in order to allow for a reasonable investigation to be conducted.
- d) If the Whistleblower's name is disclosed in the disclosure, the person receiving the disclosure will acknowledge having received the disclosure and may initiate a follow-up meeting. However, if the disclosure is submitted on an anonymous basis, there will be no follow-up meeting regarding the disclosure and the Australian Hydrogen Council will be unable to communicate with the Whistleblower if more information is required, or if the matter is to be referred to external parties for further investigation.
- e) All disclosures received will be dealt with on a confidential basis and Whistleblowers are encouraged to disclose their identities, to obtain the protection afforded to them at law.
- f) Under certain circumstances disclosures can be made to a journalist or parliamentarian and qualify for protection. This is in situations where a Whistleblower makes a public interest disclosure or an emergency disclosure. There are strict requirements for each of these disclosures. It is important that a Whistleblower understands the criteria to ensure they qualify for protection.
- g) A **public interest disclosure** is the disclosure of information to a journalist or a parliamentarian, where:
  - i. at least 90 days have passed since the Whistleblower made the disclosure to ASIC, APRA, ATO or another Commonwealth body prescribed by regulation;
  - ii. the Whistleblower does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure;
  - iii. the Whistleblower has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
  - iv. before making the public interest disclosure, the Whistleblower has given written notice to the body to which the previous disclosure was made that:
    - A. includes sufficient information to identify the previous disclosure; and
    - B. states that the Whistleblower intends to make a public interest disclosure.
- h) An emergency disclosure is the disclosure of information to a journalist or a parliamentarian, where:
  - i. the Whistleblower has previously made a disclosure of the information to ASIC, APRA, ATO or another Commonwealth body prescribed by regulation;

- ii. the Whistleblower has 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;
- iii. before making the emergency disclosure, the Whistleblower has given written notice to the body to which the previous disclosure was made that:
  - A. includes sufficient information to identify the previous disclosure; and
  - B. states that the Whistleblower intends to make an emergency disclosure; and
- i) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.
- j) the Australian Hydrogen Council encourages individuals to seek independent legal advice before making a public interest disclosure or emergency disclosure.

## 6 Confidentiality and anonymity

- a) The Australian Hydrogen Council recognises that maintaining appropriate confidentiality is crucial in ensuring that potential Whistleblowers come forward and make disclosures in an open and timely manner and without fear of reprisals being made against them.
- b) The Australian Hydrogen Council will take all reasonable steps to protect the identity of the Whistleblower and will adhere to any statutory requirements in respect of the confidentiality of disclosures made. In appropriate cases, disclosure of the identity of the Whistleblower, or the allegation made by them, may be unavoidable, such as if court proceedings result from a disclosure pursuant to this policy or there is a threat to life or property or if the company has an obligation to do so.

## 7 How the company actions a Whistleblower report

- a) Once a disclosure has been received from a Whistleblower, the Australian Hydrogen Council will consider the most appropriate action. This might include an investigation of the alleged conduct, either by an appropriate person or a group of people, such as a committee.
- b) Any investigation in relation to a disclosure will be conducted promptly and fairly, with due regard for the nature of the allegation and the rights of the persons involved in the investigation.
- c) Any evidence gathered during an investigation, including any materials, documents or records, must be held by the investigator, and held securely.
- d) During the investigation, the investigator will have access to all of the relevant materials, documents, and records. The directors, officers, employees and agents of the Australian Hydrogen Council must cooperate fully with the investigator.

- e) Following the investigation, a final report will be issued and appropriate action taken where applicable.

## 8 Support and protection of an Eligible Person following a report

### 8.1 When the policy will operate

This policy protects the Whistleblower against any reprisals, provided that the Whistleblower identifies himself or herself to the Australian Hydrogen Council, and the disclosure is:

- a) Reportable Conduct;
- b) submitted in good faith and without any malice or intentionally false allegations;
- c) based on the Whistleblower's reasonable belief that the alleged conduct, or issue related to the alleged conduct constitutes, or may constitute, a material breach of a law or other standard of behaviour; and
- d) does not result in a personal gain or advantage for the Whistleblower.

### 8.2 No reprisals

- a) All reasonable steps will be taken to ensure that the Whistleblower suffers no Detrimental Conduct for making a disclosure. The Australian Hydrogen Council will take action it considers appropriate where such conduct is identified.
- b) The Australian Hydrogen Council will not take any adverse action against a Whistleblower because they have made a disclosure, which meet the above-mentioned conditions, unless the Whistleblower is a participant in the prohibited activities with respect to which the complaint is made.
- c) If the Whistleblower was involved in the conduct, which was the subject of the disclosure, the fact that the Whistleblower has made the disclosure may be taken into account in determining the severity of the disciplinary measures, if any, that may eventually be taken against such Whistleblower.
- d) Any reprisals against a Whistleblower are a serious breach of this policy and may result in disciplinary action, including dismissal. This protection applies to anyone providing information related to an investigation pursuant to this policy.
- e) While it is the right of the Whistleblower to remain anonymous, if the Whistleblower does not identify themselves and requires complete anonymity, it will be hard for the Australian Hydrogen Council to protect them.



## 9 Communications to the Whistleblower

The Australian Hydrogen Council will ensure that, provided the disclosure was not made anonymously, the Whistleblower is kept informed of the outcomes of the investigation of the allegations, subject to the considerations of privacy of those against whom allegations are made.

## 10 Breach of this policy

Any breach of this policy will be taken seriously and may result in counselling and/or disciplinary action, up to and including summary dismissal or termination of services. An individual may also be exposed to criminal or civil liability for a breach of relevant legislation.

## 11 Review of policy

The Australian Hydrogen Council will review this policy every two years.

## 12 Further information and advice

For further information, refer to other related policies or contact [info@h2council.com.au](mailto:info@h2council.com.au).

Version 1, June 2024