



# **Netball NSW**

## Whistleblower Policy

**Adopted by New South Wales Netball Association Ltd at its Board Meeting held on 11 August 2020**

Next Reviewed: January 2021  
Last Reviewed: July 2020

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## 1 Purpose

- 1.1 The New South Wales Netball Association Limited (001 685 007) (**Netball NSW**) is committed to promoting the highest standards of integrity and ethical behaviour in all its activities.
- 1.2 Netball NSW encourages people who have a working relationship with Netball NSW to notify any Disclosable Matter to an Eligible Recipient in accordance with this policy to enable Netball NSW to address it appropriately.
- 1.3 Disclosable Matters disclosed by a Whistleblower to an Eligible Recipient in accordance with this policy will qualify for protection under the Corporations Act 2001 (Cth) (Corporations Act). The applicable protections are outlined in clause **Error! Reference source not found.** below.
- 1.4 The objective of this policy is to provide information about:
- a) which disclosures of information qualify for protection under the Corporations Act and this policy;
  - b) to whom Protected Disclosures may be made, and how they may be made;
  - c) how Netball NSW will investigate Protected Disclosures;
  - d) the protections available to Whistleblowers;
  - e) how Netball NSW will support Whistleblowers and protect them from Detriment;
  - f) how Netball NSW will ensure fair treatment of those mentioned in Protected Disclosures; and
  - g) how this policy will be made available to Netball NSW's officers, employees and volunteers.
- 1.5.1 This policy forms part of Netball NSW's risk management system and corporate governance framework. It will be made available:
- a) to all existing officers, directors, employees and volunteers by email or post via their nominated address, upon request;
  - b) to all new officers, directors, employees and volunteers as part of their new starter package;
  - c) and on Netball NSW's Company Share Drive.

## 2 Definitions

- 2.1 In this policy:
- a) **Detriment** means any damage arising from reprisal against a Whistleblower, including (but not limited to):
    - i) if the Whistleblower is a Netball NSW employee:
      - a. dismissal;
      - b. injury in his or her employment with Netball NSW;
      - c. alteration of duties to his or her disadvantage; or
      - d. discrimination between the Whistleblower and other Netball NSW employees;
    - ii) harassment or intimidation;
    - iii) harm or injury (including psychological harm);
    - iv) damage to property, reputation or business or financial position; or
    - v) any other damage.

- b) **Disclosable Matter** means any information which the discloser has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances, in relation to Netball NSW or the tax affairs of Netball NSW. This includes (but is not limited to) information which the discloser has reasonable grounds to suspect indicates that Netball NSW or an officer or employee of Netball NSW has engaged in conduct that:
- i) constitutes an offence against, or a contravention of, a provision of the Corporations Act, Australian Securities and Investments Commission Act 2001 (Cth) or the Australian Charities and Not-for-profits Commission Act 2012 (Cth);
  - ii) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
  - iii) represents a danger to the public or the Australian financial system, including conduct that poses significant risk to public safety or the stability of, or confidence in, the Australian financial system, whether or not it is in breach of any law.

Examples of Disclosable Matters include (but are not limited to):

- a. corruption (e.g. offering or accepting bribes);
  - b. fraudulent behaviour (e.g. falsifying documents);
  - c. illegal activity (e.g. theft, violence or threatened violence, dealing in, or use of, illicit drugs, criminal damage against property);
  - d. a breach of any law, regulation, internal policy or code (except a disclosure relating solely to a “personal work-related grievance” - see clause 3.4);
  - e. endangerment to the health and safety of others or potential damage to the environment;
  - f. maladministration (e.g. unjust, based on improper motives, unreasonable, oppressive or negligent);
  - g. actions that may cause financial or non-financial loss to Netball NSW or be otherwise detrimental to the interests of Netball NSW; or
  - h. concealing any Disclosable Matter.
- c) **Eligible Recipient** means a person or entity listed in the table in clause 4.4.
- d) **Protected Disclosure** has the meaning given in clause 0.
- e) **Whistleblower** means an individual who is, or has been, any of the following:
- i) an officer of Netball NSW;
  - ii) a director of Netball NSW;
  - iii) an employee or former employee of Netball NSW (whether permanent, part-time, fixed-term or temporary);
  - iv) an individual who supplies goods or services to Netball NSW (whether paid or unpaid);
  - v) an employee of a person who supplies goods or services to Netball NSW (whether paid or unpaid);
  - vi) an associate of Netball NSW (as defined in the Corporations Act) ; and
  - vii) a relative or dependant of any individual listed in paragraphs **Error! Reference source not found.**(i)- (v) above or a dependant of such an individual’s spouse.
- f) **Wrongdoer** means an individual who is deemed to have engaged in a Disclosable Matter following an investigation undertaken in accordance with this policy.

### 3 Which disclosures qualify for protection under the Corporation Action and this policy?

- 3.1 A disclosure of information qualifies for protection under the Corporations Act and this policy if it is made by a Whistleblower:
- a) to an Eligible Recipient about a Disclosable Matter;
  - b) to a legal practitioner for the purpose of obtaining legal advice or legal representation about the operation of the whistleblower provisions of the Corporations Act; or
  - c) and is an “public interest disclosure” (see clause 3.8) or an “emergency disclosure” (see clause 3.9),
- (collectively known as **Protected Disclosure**).
- 3.2 A disclosure of information that is not a Protected Disclosure does not qualify for protection. Non-protected disclosures may be protected under other legislation, such as the *Fair Work Act 2009* (Cth).
- 3.3 Whistleblowers can still qualify for protection under the Corporations Act even if their disclosure turns out to be incorrect or unsubstantiated, as long as they had reasonable grounds to suspect that a Disclosable Matter existed at the time of the disclosure.
- 3.4 Generally, disclosures that relate solely to personal work-related grievances do not qualify for protection. A disclosure will concern a personal work-related grievance if the information:
- a) concerns a grievance about any matter in relation to the discloser’s employment, or former employment, having or tending to have implications for the discloser personally; and
  - b) does not have significant implications for Netball NSW unrelated to the discloser; and
  - c) does not concern conduct or alleged conduct about a Disclosable Matter.
- 3.5 Examples of disclosures regarding personal work-related grievances that may not qualify for protection include:
- a) an interpersonal conflict between the discloser and another employee;
  - b) a decision that does not involve a breach of workplace laws;
  - c) a decision relating to the engagement, transfer or promotion of the discloser;
  - d) a decision relating to the terms and conditions of engagement of the discloser; or
  - e) a decision to suspend or terminate the engagement of the discloser or otherwise discipline the discloser.
- 3.6 A disclosure of a personal work-related grievance may still qualify for protection if it:
- a) concerns a Disclosable Matter that is accompanied by a personal work-related grievance;
  - b) concerns a potential breach of Commonwealth laws punishable for a period of 12 months or more;
  - c) concerns Netball NSW engaging in conduct that represents a danger to the public;
  - d) concerns Netball NSW engaging in misconduct that extends beyond the discloser’s personal circumstances;
  - e) concerns allegations that the discloser or another person has suffered, or has been threatened with, detriment as a result of the discloser making a Protected Disclosure; or

- f) involves a discloser seeking legal advice about the operation of the whistleblower provisions of the Corporations Act.
- 3.7 Disclosures that relate solely to personal work-related grievances that do not qualify for protection will generally be dealt with under Netball NSW's Workplace Harassment, Discrimination and Bullying Policy.
- 3.8 A protected "**public interest disclosure**" is a disclosure made to a journalist or Member of Parliament (Commonwealth or State) where:
- a) at least 90 days have passed since the time of first disclosure to ASIC, the Australian Prudential Authority (**APRA**) or another prescribed Commonwealth body;
  - b) the Whistleblower does not have reasonable grounds to believe action has been, or is being, taken in relation to the disclosure;
  - c) the Whistleblower has reasonable grounds to believe that a further disclosure is in the public interest;
  - d) the Whistleblower notifies the original recipient that they intend to make a public interest disclosure and provides sufficient information to identify the previous Protected Disclosure; and
  - e) the extent of the information disclosed is no greater than necessary to inform the recipient of the Disclosable Matter.
- 3.9 A protected "**emergency disclosure**" is a disclosure made to a journalist or Member of Parliament (Commonwealth or State) where:
- a) the information has been previously disclosed to ASIC, APRA or another prescribed Commonwealth body;
  - b) 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;
  - c) the Whistleblower notifies the original recipient that they intend to make an emergency disclosure and provides sufficient information to identify the previous Protected Disclosure; and
  - d) the extent of the information disclosed is no greater than necessary to inform the recipient of the substantial and imminent danger.

## 4 How so I make a Protected Disclosure

- 4.1 A disclosure must be made to an Eligible Recipient, being any of the people or entities listed in the table below in order for it to qualify as a Protected Disclosure.
- 4.2 Disclosures may be made anonymously, although Netball NSW is best placed to investigate a disclosure and protect the Whistleblower when the Whistleblower's identity is known.
- 4.3 If a disclosure is made anonymously, the Whistleblower should provide sufficient information to allow the matter to be properly investigated. Netball NSW encourages Whistleblowers to provide an anonymous email address and to adopt a pseudonym for the purposes of making the disclosure, through which additional questions can be asked and information provided and to assist in protecting anonymity.

- 4.4 If a disclosure is not anonymous, the recipient of the disclosure must keep the Whistleblower's identity confidential unless the Whistleblower consents to his or her identity being disclosed.

Who to contact	How to contact
Any officer or senior manager of Netball NSW, but in particular, the individuals listed in the right hand column.	Email, phone or directly speak to: <ul style="list-style-type: none"> <li>• Carolyn Campbell, Chief Executive Officer (CEO) <a href="mailto:ccampbell@netballnsw.com">ccampbell@netballnsw.com</a> 02 9951 5000</li> <li>• Louise Sullivan, President <a href="mailto:lsullivan@netballnsw.com">lsullivan@netballnsw.com</a></li> </ul>
An auditor engaged by Netball NSW	KPMG <a href="https://home.kpmg/au/en/home.html">https://home.kpmg/au/en/home.html</a>
The Australian Securities & Investments Commission	<a href="http://www.asic.gov.au/complain">http://www.asic.gov.au/complain</a>
Commissioner of Taxation (in relation to Netball NSW's tax affairs only)	<a href="https://www.ato.gov.au/general/gen/whistleblowers/">https://www.ato.gov.au/general/gen/whistleblowers/</a>
A legal practitioner for the purpose of obtaining legal advice or representation under the "protection for Whistleblowers" provisions of the Corporations Act	<ul style="list-style-type: none"> <li>• Australian Capital Territory: <a href="https://www.actlawsociety.asn.au/lawyers-directory">https://www.actlawsociety.asn.au/lawyers-directory</a></li> <li>• Northern Territory: <a href="https://lawsocietynt.asn.au/nt-legal-directory/other-legal-links-1/9-pages/legal-directory-a-links.html">https://lawsocietynt.asn.au/nt-legal-directory/other-legal-links-1/9-pages/legal-directory-a-links.html</a></li> <li>• New South Wales: <a href="https://www.lawsociety.com.au/for-the-public/find-a-lawyer">https://www.lawsociety.com.au/for-the-public/find-a-lawyer</a></li> <li>• Queensland: <a href="http://www.qls.com.au/for_the_community/find_a_solicitor">http://www.qls.com.au/for_the_community/find_a_solicitor</a></li> <li>• South Australia: <a href="https://referral.lawsocietysa.asn.au/">https://referral.lawsocietysa.asn.au/</a></li> <li>• Tasmania: <a href="https://lst.org.au">https://lst.org.au</a></li> <li>• Victoria: <a href="https://www.liv.asn.au/find-a-lawyer">https://www.liv.asn.au/find-a-lawyer</a></li> <li>• Western Australia: <a href="https://www.lawsocietywa.asn.au/find-a-lawyer/">https://www.lawsocietywa.asn.au/find-a-lawyer/</a></li> </ul>

## 5 Investigation Process

### 5.1 Whom to address your concerns to

- a) If your concern relates to a Staff Member of Netball NSW or any matter other than those mentioned in clause 5.1 (b) or (c) below, this should be addressed to the Netball NSW CEO.

- b) If your concern relates to the Netball NSW CEO or a Director this should be addressed to the President of Netball NSW.
- c) If your concern relates to the President of Netball NSW it should be addressed to the Deputy Chair of Netball NSW

## 5.2 Initial review

- a) Upon receiving a disclosure that qualifies for protection under the Corporations Act and this policy, Netball NSW will take the steps set out in this clause 5 to review the disclosure.
- b) For any concerns raised in regards to Netball NSW Staff Members or any matters other than those mentioned in clause 5.1 (b) or (c), the Netball NSW CEO will promptly carry out an initial review of the disclosure. A disclosure will not be reviewed or investigated by any other individual, unless the disclosure concerns the CEO, in which case the investigation will be conducted by the Netball NSW President within Netball NSW.
- c) For any concerns raised in regards to Netball NSW Directors or the CEO, the President will promptly carry out an initial review of the disclosure. A disclosure will be reviewed or investigated by an appointed external investigator.
- d) For any concerns raised in regards to Netball NSW President, the Deputy Chair will promptly carry out an initial review of the disclosure. A disclosure will be reviewed or investigated by an appointed external investigator.

## 5.3 Action following investigation

- a) Once a disclosure is made, and if deemed necessary, immediate action will be taken to prevent alteration or destruction of any relevant records. Such actions may include (but are not limited to):
  - i) removing relevant records and placing them in a secure location;
  - ii) limiting access to the location where the records currently exist; and
  - iii) preventing the individual who is the subject of the Disclosure from accessing the records.
- b) If the allegation is substantiated by the investigation, the Wrongdoer will be subject to appropriate disciplinary action in proportion to the misconduct, including dismissal if necessary, by the appropriate level of management.
- c) Netball NSW will also take all reasonable steps, including commencing legal proceedings to recover any loss from the Wrongdoer.

## 6 Roles and Responsibilities

### 6.1 Employees and volunteers have a responsibility to:

- a) disclose Disclosable Matters in accordance with this policy;
- b) not raise vexatious, malicious or frivolous concerns;
- c) ensure that their behaviour complies with Netball NSW's policies and procedures;
- d) participate in resolution pathways with honesty whilst maintaining confidentiality;
- e) ensure they do not cause, or threaten to cause, Detriment to Whistleblowers; and
- f) protect the identity of, or any information that is likely to lead to the identification of, Whistleblowers or individuals mentioned in a Protected Disclosure (this applies to such information obtained directly or indirectly because of the Protected Disclosure). For more information on this, refer to clause **Error! Reference source not found.** below.

- 6.2 Managers have a responsibility to:
- a) conduct themselves in line with Netball NSW's policies and the relevant legislation;
  - b) disseminate approved policies to officers and employees;
  - c) ensure employees have received, read and understood policies;
  - d) assess the risks of Disclosable Matters within their area of control;
  - e) educate employees and volunteers about Whistleblower laws; and
  - f) facilitate, receive and investigate Protected Disclosures.
- 6.3 The Human Resources Manager or in their absences Executive General Manager Finance and Strategy has responsibility to:
- a) provide training and coaching to recipients of Protected Disclosures and employees on this policy; and
  - b) report instances of Disclosable Matters to the CEO as appropriate.
- 6.4 The Chief Executive Officer has a responsibility to:
- a) Facilitate, receive and investigate Protected Disclosures; and
  - b) Oversee the management of Protected Disclosures in accordance with this policy.

## **7 Whistleblower Protection**

- 7.1 Netball NSW will protect any Whistleblower that makes a Protected Disclosure where that Whistleblower has reasonable grounds to suspect the Protected Disclosure concerns a Disclosable Matter.
- 7.2 Generally, the identity of, or any information that is likely to lead to the identification of, a Whistleblower (this applies to such information obtained directly or indirectly because of the Disclosure) must not be disclosed except with their consent. Note that disclosures of information likely to lead to the identification of a Whistleblower may be made if it is reasonably necessary for the purposes of investigating a Disclosable Matter. In such circumstances, Netball NSW must take all reasonable steps to reduce the risk of the Whistleblower being identified.
- 7.3 The identity of, or any information that is likely to lead to the identification of, a Whistleblower may be disclosed to any Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions or duties or to a legal practitioner for the purpose of obtaining advice about the application of the whistleblower provisions of the Corporations Act.
- 7.4 It is unlawful for Netball NSW or any other person to engage in conduct against any Whistleblower that causes, or will cause, Detriment in circumstances where the person believes or suspects that the Whistleblower or any other person made, may have made, proposes to make or could make a Protected Disclosure. Any Netball NSW employee, officer, director or volunteer proven to have caused, or attempted to cause, Detriment to any Whistleblower may be subject to disciplinary action up to and including termination.
- 7.5 Similarly, Netball NSW itself must not engage in conduct that causes a Whistleblower Detriment. In particular, Netball NSW will not subject the Whistleblower to civil, criminal or administrative liability (including disciplinary action) for making a disclosure and will not

enforce any contractual remedy, such as dismissal, against the Whistleblower on the basis of a disclosure. This protection applies whether the disclosure is proven or not.

- 7.6 Where a Protected Disclosure is made, Netball NSW will assess the risk of the Whistleblower being subjected to Detriment and may implement interim measures to manage the risk of Detriment. This may include implementing temporary alternative working arrangements or other measures to support and protect the Whistleblower, including (but not limited to) providing the Whistleblower with:
- a) access to Employee Assistance Program (EAP);
  - b) flexibility to work practices as necessary and relevant;
  - c) paid personal leave beyond what is currently available (as approved by Netball NSW);
  - d) paid access to other legal services as reasonably required in the circumstances; and
  - e) paid access to psychological services as needed (beyond what is provided via the EAP).

## **8 Fair Treatment**

- 8.1 Netball NSW will ensure the fair treatment of both Whistleblowers and any employees mentioned in a Protected Disclosure by:
- a) educating employees, officers, directors and volunteers on the requirements of this policy;
  - b) facilitating anonymous Protected Disclosures;
  - c) maintaining confidentiality over Protected Disclosures and the identity of Whistleblowers and others identified in Reports;
  - d) taking steps to ensure investigations into Disclosable Matters are confidential, fair and objective;
  - e) protecting Whistleblowers from Detriment as outlined in clause 7 above;
  - f) taking steps to monitor the wellbeing of Whistleblowers and employees mentioned in Protected Disclosures;
  - g) regularly updating the Whistleblower on the progress of any investigation into a Protected Disclosure; and
  - h) not taking any disciplinary action against an employee mentioned in a Protected Disclosure unless or until the Protected Disclosure is substantiated.

## 9 Policy Administration Details

Date Effective:	11 August 2020
Version Number:	1
Policy changes, updates or amendments:	This Policy may be rescinded, changed or replaced at any time at the absolute discretion of the Chief Executive Officer of Netball NSW or their authorised delegate.
Status of Policy:	The terms of this Policy are not intended to be contractual in nature and do not form part of any worker's contract of employment or engagement.
Review:	1 January 2021
<b>Related policies, procedures and resources</b>	Code of Conduct Counselling and Discipline Policy Workplace Harassment, Discrimination and Bullying Policy Netball NSW Staff Handbook