

18 September 2019

Andivina Uy
Senior Adviser
Strategic Policy
Office of the Whistleblower
Australian Securities and Investments Commission

By email only: whistleblower.policy@asic.gov.au

Dear Ms Uy,

ASIC CP 321 Whistleblower policies

We refer to ASIC's *Consultation Paper 321 Whistleblower Policies (CPS321)* which seeks feedback on proposed guidance for entities that must have a whistleblower policy. Bendigo and Adelaide Bank Limited (**the Bank**) values the opportunity to provide its response to CPS321.

The Bank is committed to promoting a culture of integrity and ethical behaviour, where all our decisions, actions and behaviours reflect and reinforce our corporate values. We understand that it is important to identify problems early to assist in improving outcomes of all our stakeholders. Accordingly, the Bank implemented a "*Reporting of Concerns*" policy with supported guidelines in 2011 and has sought to review and update that policy regularly since its introduction.

The Bank has actively participated in industry forums and discussions conducted by the Australian Banking Association (**ABA**) in relation to CPS321 and supports and reiterates the matters raised in response to CPS321 by the ABA. In addition to those matters raised, the Bank requests that ASIC consider the following additional comments to enhance the draft guidance:

Whistleblower protection and investigations officers

- RG 000.79 states "*it is good practice for an entity to ensure that any individual in the entity (e.g. an 'eligible recipient' or the discloser's supervisor or manager) who receives a disclosure notifies the entity's whistleblower protection officer*"

The paragraph suggests that an employee will be afforded the protection of the whistleblower provisions if s/he discloses to his/her supervisor or manager. This appears to contradict section 1317AAC of the Corporations Act (Cth) 2001 which defines "eligible recipient", amongst other persons, as an "officer or senior manager" of the entity. The Bank understands that the purpose of the provision is to ensure that adequately responsible people have this responsibility, rather than more junior employees. Accordingly, the Bank proposes that the language be narrowed to ensure that only officers and senior managers, not the discloser's supervisor or manager are described as "eligible recipients".

- RG00.193 makes reference to the *“use of plain English,..... adopts a simple structure and clear headings.”*

The Bank agrees with the intention of these references however it questions the ability of entities to draft a whistleblower policy that complies with these requirements given that the relevant legislation and related Regulatory Guide are both detailed and complex documents which each create numerous and comprehensive obligations. The Bank queries whether small entities with limited resources will achieve this end.

- As raised in the ABA submission, the terms *“should”* and *“must”* appear to be used interchangeably in both the draft RG and the draft Good Practice Guide. It is the Bank’s view that consistency in the use of these terms and their application. The resolution of the current confusion in the respective language is critical to ensuring that impacted entities are clear on which obligations are mandatory and which are discretionary.

We would be pleased to provide further information or explanation of the matters raised within this correspondence.

Yours sincerely



Taso Corolis
Chief Risk Officer
Bendigo and Adelaide Bank Limited