

13 September 2019

Perpetual Limited
ABN 86 000 431 827

Angel Place,
Level 18, 123 Pitt Street
Sydney NSW 2000
GPO Box 4172
SYDNEY NSW 2001
Australia

Phone 02 9229 9000
Fax 02 82561419

www.perpetual.com.au

Andivina Uy

Senior Adviser, Strategic Policy

Greg Hackett

Senior Manager, Office of The Whistleblower

Australian Securities and Investments Commission

GPO Box 9827

BRISBANE QLD 4001

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

Dear Andivina and Greg

CONSULTATION PAPER 321 – WHISTLEBLOWER POLICIES

Perpetual Limited (Perpetual) welcomes the opportunity to comment on ASIC's proposal to release a Regulatory Guide 000: Whistleblower Policies to assist companies establish, implement and maintain a whistleblower policy that complies with the obligations under the Corporations Act 2001 (Cth).

Perpetual has only responded to questions where it wishes to make a comment.

Question B1Q1

[Do you agree with our proposed guidance in Section B of draft RG 000? If not, why not?](#)

As a general observation, the Regulatory Guide 000 is too prescriptive. The Corporations Act prescribes the content of a whistleblower policy in 1317A(5); however, the Regulatory Guide goes much further.

A policy document for all employees needs to be simple, clear and concise. In ASIC's words it should adopt a "simple structure" (RG 000.193(b)). If ASIC requires the whistleblower policy to contain all of these additional statements, a company's whistleblower policy will be too confusing and too long. As a general rule, Perpetual tries to keep policy documents brief and concise, in such a form that all employees at all levels of the organisation will understand them.

The following table sets out some examples of where the proposed ASIC Regulatory Guide goes further than the legislative requirements:

RG reference	Details	Perpetual Response
RG 000.31-34	“An entity’s whistleblowing policy should identify the different types of disclosures within and outside the entity who can make a disclosure that qualifies for protection”	Setting out all of the eligible whistleblowers is not a requirement of 1317AI(5).
RG 000.43	“the policy should explain that a discloser can still qualify for protection even if their disclosure turns out to be incorrect”	This is not a requirement of 1317AI(5); Perpetual has dealt with this in a training pack on whistleblowing
RG 000.53	“The policy should explain when a disclosure about, or including, a personal work-related grievance still qualifies for protection.”	This is not a requirement of 1317AI(5). This is also a confusing concept and Perpetual has tried to give different examples in training rather than articulating in the policy.
RG 000.57	“It should highlight that a discloser qualifies for protection from the time they make their disclosure, regardless of whether the disclosure or recipient recognises that the disclosure qualifies for protection”	This is not a requirement of 1317AI(5).
RG 000.64	“An entity’s policy should explain that disclosures to a legal practitioner for the purposes of obtaining legal advice are protected.”	This is not a requirement of 1317AI(5); and could be dealt with in an organisation’s training.
RG 000.93	“The policy should explain that a discloser may choose to adopt a pseudonym”	This is not a requirement of 1317AI(5).
RG 000.105	“An entity’s policy should explain that it is illegal for a person to identify a discloser, to disclose information that is likely to lead to the identification of the discloser”	This is not a requirement of 1317AI(5); Perpetual has dealt with this in its whistleblowing training which has been rolled out to all staff.
RG 000.107	“An entity’s policy should outline the measures the entity has in place for ensuring confidentiality”	This is not a requirement of 1317AI(5); Perpetual has dealt with this in a training pack on whistleblowing
RG 000.133	“An entity’s policy should include information about who will be responsible for handling and investigating a disclosure relating to its managing director, chief executive officer, or a director.”	This is not a requirement of 1317AI(5).
RG 000.134-137	“An entity’s policy should provide transparency about the entity’s investigation process and timeframe.”	This is not a requirement of 1317AI(5). The investigation process and timeframe will depend upon the matter the subject of the whistleblower report.

RG reference	Details	Perpetual Response
RG 000.143	“An entity’s whistleblowing policy should state that each disclosure will be acknowledged within a reasonable period after the disclosure is received, if the discloser can be contacted (including through anonymous channels)”	This is not a requirement of 1317AI(5). If a whistleblower contacts out external hotline, we will not be able to send them an acknowledgement.
RG 000.144	“The entity should provide disclosers with updates at various stages...the policy should indicate how frequently a discloser will receive an update.”	This is not a requirement of 1317AI(5). It won’t be possible if they have chosen to remain anonymous. It might depend upon the complexity of the matter being investigated.
RG 000.146	“An entity’s whistleblower policy should outline how the findings from an investigation will be documented and reported.”	This is not a requirement of 1317AI(5). It will not be possible to cater for all whistleblower reports as it will depend upon the outcome of the investigation.

Question B1 Q10

Are there any practical problems with our proposed guidance?

There are practical problems with the guidance in cases where a whistleblower has not waived their right to anonymity:

- RG000.73-RG000.79 – describing suggested roles and responsibilities is not going to work in practice. If a whistleblower makes an anonymous report to a senior manager, then it will be impossible to appoint another person as a whistleblower protection officer.
- RG 000.107(c): “only a restricted number of people who are directly involved in handling and investigating a disclosure are made aware of a discloser’s identity or information likely to lead to the identification of the discloser”. This suggests that the identity of the whistleblower can be disclosed to a number of people, but Perpetual is not sure whether this is accurate.
- It is also noted that a number of the concepts set out in the Australian Standard AS 8004-2003 (which has been withdrawn) are not going to work as a result of this new requirement to protect anonymity, so this should not even be referred to.

Question B2 Q1

Do you agree with our proposed additional good practice guidance in Section C of draft RG 000? If not, please provide details.

As described above, the reference to the Australian Standard AS 8004-2003 should be removed as this standard does not cater for anonymous disclosures.

Yours sincerely

Emma Tetley

Head of Group Compliance