

Whistleblower Policy

1 Introduction

Vimy Resources Limited (**Vimy**) is committed to promoting and supporting a culture of corporate compliance, honest and ethical behaviour, and good corporate governance. Vimy is committed to maintaining the highest standards of ethics, honesty, openness, fairness and accountability, and we recognise that our people have an important part to play in achieving this goal.

Officers and employees must report concerns regarding potentially unethical, unlawful or improper practices or behaviours (where there are reasonable grounds to suspect such conduct). Provided certain criteria are met, as detailed in this Policy, the individual reporting the concerns will be protected from intimidation, disadvantage or reprisal for doing so.

The relevant protections are set out in the *Corporations Act 2001* (Cth) (**Corporations Act**) and the *Tax Administration Act 1953* (Cth), as amended by the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) (together, the **Whistleblower Protection Scheme**).

2 Aim

The purpose of this Whistleblower Policy (**Policy**) is to set out:

- (a) the types of disclosures that qualify for protection under the Whistleblower Protection Scheme;
- (b) the protections available to whistleblowers, including protections under the Whistleblower Protection Scheme;
- (c) who disclosures that qualify for protection under the Whistleblower Protection Scheme can be made to and how they can be made;
- (d) how Vimy will support whistleblowers and protect them from detriment;
- (e) how Vimy will investigate disclosures that qualify for protection;
- (f) how Vimy will ensure fair treatment of employees who are mentioned in disclosures that qualify for protection, or who the disclosure relates to; and
- (g) how this Policy is to be made available to officers and employees of Vimy.

3 Scope of the Whistleblower Protection Scheme

3.1 What disclosures are protected?

The following are the primary types of disclosures that 'qualify' for protection under the Whistleblower Protection Scheme:

- (a) disclosures by an 'eligible whistleblower' to ASIC, APRA, the Commissioner of Taxation, a prescribed Commonwealth authority or a legal practitioner; or
- (b) disclosures by an 'eligible whistleblower' to an 'eligible recipient',

if:

- (c) the discloser has 'reasonable grounds';
- (d) to 'suspect';
- (e) that the disclosed information concerns:
 - (i) misconduct or an improper state of affairs or circumstances in relation to Vimy or one of its related bodies corporate; or
 - (ii) indicates that Vimy, a related body corporate or one of its or their officers or employees has engaged in conduct that constitutes an offence against:
 - (A) the Corporations Act;
 - (B) the *Australian Securities and Investments Commission Act 2001 (Cth)*;and any instrument made under these Acts, or
 - (C) other financial services legislation specified in under section 1317AA(5) of the Corporations Act;
 - (iii) an offence against other Commonwealth legislation that is punishable by imprisonment for 12 months or more; or
 - (iv) represents a danger to the public or the financial system,(together, **Disclosable Matters**).

Misconduct includes fraud, negligence, default, breach of trust and breach of duty. The misconduct or an improper state of affairs can also be in respect of tax affairs.

The disclosable matters do not need to involve a contravention of the law. It could be a systemic issue of concern that the relevant regulator should know about to properly perform its functions, or it may relate to dishonest or unethical behaviour.

Personal work-related grievances

A disclosure does not qualify for protection under the Whistleblower Protection Scheme to the extent that the information disclosed:

- (a) concerns a personal work-related grievance of the eligible whistleblower; and
- (b) does not concern a contravention, or an alleged contravention of paragraph 4.3 of this Policy.

For the purposes of the Whistleblower Protection Scheme, a disclosure is a 'personal work-related grievance' if:

- (a) the information concerns a grievance about any matter in relation to the eligible whistleblower's employment, or former employment, having (or tending to have) implications for the eligible whistleblower personally; and
- (b) the information:
 - (i) does not have significant implications for Vimy, or another regulated entity, that do not relate to the discloser; and
 - (ii) does not concern conduct, or alleged conduct, referred to in paragraph 3.1(e)(ii) of this Policy.

Examples of personal work-related grievances include:

- (a) an interpersonal conflict between the discloser and another employee of Vimy;
- (b) a decision relating to the discloser's employment, transfer or promotion; or
- (c) a decision relating to suspend or terminate the employment of the discloser, or otherwise to discipline the discloser.

In the first instance, Vimy recommends that these personal work-related grievances are first raised with the discloser's immediate supervisor.

3.2 Who is an 'eligible whistleblower'?

The following persons are capable of being 'eligible whistleblowers':

- (a) anyone who is or has been an officer or employee of Vimy;
- (b) a current or former supplier to Vimy or an employee of such a supplier;
- (c) an associate of Vimy; and
- (d) a relative, dependent or partner of any individual referred to above.

The concept of 'eligible whistleblowers' also extends to any persons who previously held any of the above positions or functions. It also extends to family members of these persons.

3.3 Who can receive a disclosure?

For the protections under this Policy to apply, a disclosure must be made directly to an 'eligible recipient'. If you are an eligible whistleblower, your disclosure qualifies for protection from the time it is made to an eligible recipient, regardless of whether or not the eligible recipient recognises that the disclosure qualifies for protection at that time. All of the recipients noted within this paragraph 3.3 are, collectively, 'Authorised Recipients'.

Eligible recipients within Vimy

An eligible recipient within Vimy will be:

- (a) the Chair of the Vimy Board of Directors; or
- (b) Vimy's Company Secretary.

Whistleblowers may call or email Vimy for further details on how to contact the Vimy eligible recipients.

Disclosures to external regulatory bodies

Vimy's preference is for disclosures to be made internally so that Vimy is given the opportunity to investigate and deal with the issue at hand. However, an eligible whistleblower may choose to raise Disclosable Matters outside of Vimy with ASIC or a Commonwealth authority prescribed in the *Corporations Regulations 2001 (Cth)* (**Regulations**).

The Policy does not affect any mandatory reporting requirements that Vimy may have under any other Commonwealth or State or Territory law.

Disclosure to a legal practitioner

A report of a Disclosable Matter will also be protected if it is made to a qualified legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Corporations Act.

Public interest disclosures and emergency disclosures

There are additional categories of disclosures called 'public interest disclosures' and 'emergency disclosures'. These can be made to external bodies, journalists and members of Parliament but only in certain limited circumstances, as set out in the Corporations Act.

We recommend you seek independent legal advice (at your own cost) before making any 'public interest disclosures' or 'emergency disclosures' to external bodies, a journalist or a member of parliament.

Anonymous disclosures

An eligible whistleblower may elect to make their disclosure anonymously. In this case, the eligible whistleblower may choose to use a pseudonym or to have an anonymous email address to submit their disclosure to an Authorised Recipient. If they concern a Disclosable Matter, these anonymous disclosures are still capable of being protected under the Whistleblower Protection Scheme.

4 Protections

4.1 Confidentiality

Strict confidentiality obligations apply in respect of any disclosures that qualify for protection under the Whistleblower Protection Scheme.

Unless the eligible whistleblower consents, their identity or any information that may lead to the disclosure of their identity must not be disclosed by the recipient to any other person (subject to the exceptions set out below).

If the disclosure qualifies for protection set out in this Policy, it is likely the eligible whistleblower may be asked to provide consent to the disclosure of their identity or information that is likely to lead to their identification. This would only be to facilitate any investigation and/or resolution of the matter. Eligible whistleblowers are encouraged to consent to their identity being disclosed. If consent is withheld, it may not be possible to adequately investigate and respond (if at all) to the disclosure. Being able to share an eligible whistleblower's identity will also assist in efficient investigation of the matters that an eligible whistleblower discloses.

If there is a material breach of confidentiality, the eligible whistleblower can lodge a complaint with an Authorised Recipient.

However:

- (a) anonymous disclosures are still capable of being protected (though it may be difficult to investigate these disclosures effectively).
- (b) if a discloser does not consent to their identity being disclosed to any other persons, it will still be lawful to:
 - (i) disclose their identity to:
 - (A) ASIC, APRA, the AFP, or the Commissioner of Taxation;

- (B) a legal practitioner for the purposes of obtaining advice about the disclosure; or
 - (C) to a body prescribed by the Regulations,
- (ii) disclose information that may lead to the identification of the individual if this is reasonably necessary for the purpose of investigating the qualifying disclosure.

4.2 Vimy cannot pursue action against the discloser

Vimy will be prohibited from pursuing any civil, criminal, administrative, disciplinary or contractual action against an eligible whistleblower in relation to any protected disclosure that they make.

However, the protections do not grant immunity for any misconduct an eligible whistleblower has engaged in that is revealed in their disclosure.

4.3 Detriments and threats of detriment prohibited

The Whistleblower Protection Scheme makes it unlawful for:

- (a) a person to engage in conduct against another person that causes or will cause a detriment:
 - (i) in circumstances where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure; and
 - (ii) if the belief held by that person is the reason or part of the reason for their conduct.

Threats of detriments will also be unlawful if:

- (a) the person making the threat intended to cause fear that a detriment would be carried out or was reckless as to whether the person against who it was directed would fear the threatened detriment being carried out; and
- (b) the threat was made because the person makes or may make a qualifying disclosure.

The meaning of 'detriment' is very broad and includes:

- (a) dismissing an employee;
- (b) injuring an employee in their employment;
- (c) altering an employee's position or duties to their disadvantage;
- (d) discriminating between an employee and other employees;
- (e) harassing or intimidating a person;
- (f) harming or injuring a person;
- (g) damaging a person's property, reputation, business or financial position; and
- (h) any other damage to a person.

4.4 Court orders

Courts are given broad scope to make orders remedying a detriment or threatened detriment. These include to order injunctions, compensation orders (including against individual employees and their employers), reinstatements, exemplary damages, and the making of apologies. Civil and criminal sanctions also apply to breaches of the Whistleblower Protection Scheme.

4.5 Are there any other protections that are available?

Disclosures may also amount to the exercise of a workplace right by an employee or contractor. Vimy, its officers and its employees are prohibited under the *Fair Work Act 2009* (Cth) from taking adverse action against employees or contractors because they exercised or propose to exercise any workplace rights.

5 Support, investigations and fair treatment

5.1 Assessing disclosures

Vimy is committed to transparency and to building an environment in which personnel feel free to raise legitimate issues relating to Vimy's operations.

On receiving a disclosure under this Policy, Vimy will need to assess each disclosure to determine whether:

- (a) it qualifies for protection; and
- (b) a formal, in-depth investigation is required.

Whenever a qualifying disclosure under the Whistleblower Protection Scheme is made, Vimy's Company Secretary will reiterate the requirements of this Policy with any person against whom a disclosure may be made or with whom the discloser may work directly to ensure that the protections afforded under the Whistleblower Protection Scheme are not undermined. Disciplinary action up to and including dismissal may be taken against any person who causes or threatens to cause any detriment against an eligible whistleblower.

At the same time, it is crucial that due process be observed before any action is taken against a person against whom a disclosure is made. Such action will only occur where there is cogent evidence of the alleged misconduct or improper state of affairs or circumstances or other conduct falling within the scope of the Whistleblower Protection Scheme.

Qualifying disclosures will often be investigated internally by Vimy's Company Secretary, in conjunction with the Chair. However, it may sometimes be appropriate for investigations to be carried out externally on behalf of Vimy. Whether an investigation will be carried out externally will depend on the seriousness of the allegations and who they relate to.

5.2 Further steps and investigation of disclosures

The Vimy Board of Directors (**Board**) specifically reserves the right to determine whether a disclosure should be investigated or not.

In considering whether a disclosure should be investigated, the Board must objectively consider the following matters in, amongst other things:

- (a) whether the disclosure was made in good faith;

- (b) whether the disclosure was made in pursuit of a personal work-related grievance;
- (c) whether the disclosure has been resolved by subsequent action;
- (d) whether there is any ongoing detriment to Vimy, or ongoing breach of the law, which could be resolved by investigating and responding to the disclosure;
- (e) in the event the disclosure relates to a historical breach of the law, whether it is necessary or appropriate to report the breach to a regulatory authority; and
- (f) whether the disclosure could be resolved in a more appropriate forum (e.g. a boardroom discussion).

Where the Board has determined that it is appropriate for a disclosure to be investigated, then the Board will determine:

- (a) the nature and scope of the investigation;
- (b) who should lead the investigation – including whether an external investigation is appropriate;
- (c) the nature of any technical, financial or legal advice that may be required to support the investigation; and
- (d) the anticipated timeframe for the investigation. Each investigation will be different, which will impact the applicable timeframe. However, Vimy's intent is to complete an investigation as soon as practicable.

Where practicable, Vimy will keep the eligible whistleblower informed of the steps taken or to be taken (or if no action is to be taken, the reason for this), and provide appropriate updates, including about the completion of any investigation. However, the extent of the information provided, or whether it will be provided at all, will be subject to applicable confidentiality considerations, legal obligations and any other factors Vimy considers relevant in the particular situation.

Vimy may not be able to undertake an investigation, or provide information about the investigation process, if it is not able to contact the eligible whistleblower, for example, if a disclosure is made anonymously and has not provided a means of contact.

Where practicable, whistleblowers will receive updates about when the investigation has begun, while the investigation is in progress, and after the investigation has been finalised. The frequency and timeframe of any updates may vary depending on the nature of the disclosure. Vimy will also have regard to confidentiality considerations when providing updates.

5.3 Documenting and reporting the findings of an investigation

Where appropriate, Vimy will report findings of an investigation to the Board of Vimy. The method for documenting and reporting the findings of an investigation will depend on the nature of the disclosure, but may include a summary report of the findings. Any reporting of findings will have regard to applicable confidentiality requirements. There may be circumstances where it may not be appropriate to provide details of the outcome to the eligible whistleblower.

6 Vexatious disclosures

A discloser will only be protected if they have **objectively reasonable** grounds to suspect that the information that they disclose concerns misconduct or an improper state of affairs or circumstances or other conduct falling within the scope of the Whistleblower Protection Scheme.

The protections under the Whistleblower Protection Scheme will not extend to vexatious complaints. If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.

Depending on the circumstances, it may be appropriate for Vimy to take disciplinary action against any person who does not have objectively reasonable grounds for their disclosure. Such action may include the termination of employment.

7 Other matters

It is the responsibility of all Vimy officers and employees to comply with, be aware of, and understand the scope of, the Whistleblower Protection Scheme and the protections that it affords eligible whistleblowers.

Any breach of this Policy may result in disciplinary action, up to and including termination of employment.

This Policy is not intended to go beyond the legislation. This Policy is not a term of any contract, including any contract of employment and does not impose any contractual duties, implied or otherwise, on Vimy.

This Policy will be periodically reviewed by the Board to check that it is operating effectively and determine whether any changes are required to the policy.