

## WHISTLEBLOWER POLICY

### 1. Whistleblower policy statement

1. Birdon is committed to ensuring the highest standards of integrity and promoting a culture of honest and ethical behaviour, corporate compliance and good corporate governance. As part of this commitment, Birdon recognises the need to have robust procedures in place to ensure people can report instances of suspected unethical, illegal, fraudulent or undesirable conduct by Birdon or its officers, employees or agents, and to ensure that anyone who does report such behaviour can do so without fear of reprisal, discrimination, intimidation or victimisation.
2. This whistleblower policy forms part of Birdon's broader risk management framework.
3. The purpose of this whistleblower policy is to:
  - a. Help deter wrongdoing by encouraging more disclosures of wrongdoing to Birdon.
  - b. Set out how people to whom this whistleblower policy applies, can report matters and how those matters will be investigated.
  - c. Describe how Birdon will protect the identity of persons making disclosures, and other persons because a disclosure has been made, under this whistleblower policy and safeguard them from detriment and retaliation.
  - d. Provide transparency around Birdon's framework for receiving, handling and investigating disclosures.
  - e. Support Birdon's values, its long-term sustainability and reputation, and to meet its legal and regulatory obligations.
  - f. Describe the protections available where the disclosures are made in accordance with Part 9.4AAA of the *Corporations Act 2001* (Cth) (**Corporations Law**) or Part IVD of the *Taxation Administration Act 1953* (Cth) (**Tax Act**).
  - g. Place ultimate responsibility for this whistleblower policy, its implementation, and the encouragement of people to whom this whistleblower policy applies to speak up without fear of victimisation or retaliation, with Birdon's Directors.
4. A person making a disclosure under this whistleblower policy is referred to as a **whistleblower**.
5. This whistleblower policy applies to:
  - a. The board of Birdon and each director.
  - b. All employees of Birdon, whether permanent or casual, full-time or ongoing, trainees or apprentices.
  - c. Suppliers and contractors to Birdon, whether through a company, partnership, sole trader or labour hire arrangement.
  - d. Individuals identified as eligible whistleblowers in section 2.
6. This whistleblower policy does not form part of any employee's contract of employment and Birdon may amend it at any time.

## 2. Who can make a disclosure under this whistleblower policy, and the effect of making a disclosure

1. The following individuals can make reports of **Disclosable Matters** (see section 5) in accordance with this whistleblower policy:
  - a. An **eligible whistleblower** (see the definition in for the purposes of the Corporations Law, and the definition in Schedule 2 for the purposes of the Tax Act), which includes an individual who is, or has been, any of the following in relation to Birdon:
    - i. an officer, director or senior manager;
    - ii. a permanent, temporary, casual, part-time or full-time employee;
    - iii. a worker on secondment or supplied by an agency;
    - iv. a trainee and apprentice;
    - v. suppliers of services or goods to Birdon, such as contractors, consultants, service providers and business partners;
    - vi. a spouse, relative or dependant of an individual referred to in section 1.a.i to section 1.a.iv.
2. All persons who make a disclosure of information relating to a Disclosable Matter (see section 5) in accordance with this whistleblower policy, whether an eligible whistleblower or not, will:
  - a. Have their identity protected by Birdon, in accordance with section 8.
  - b. Be protected from detrimental conduct (see paragraph 6.2 of Schedule 1) by Birdon, in accordance with section 11.
3. Any person who is mentioned in a Disclosable Matter (see section 5) will be treated fairly by Birdon, in accordance with section 10.
4. In addition to the protections outlined in section 2, an eligible whistleblower will also qualify for protections available under the Corporations Law and the Tax Act if they make a disclosure that qualifies for protection under those statutes.

## 3. Roles and responsibilities

1. Birdon will appoint a **Whistleblower Officer** and **Designated Disclosure Officers** to receive and investigate disclosures under this policy.
2. The **Whistleblower Officer** has primary and day-to-day responsibility for:
  - a. Implementing this whistleblower policy and ensuring it is made available to the officers and employees of Birdon, monitoring its use and effectiveness and dealing with any queries about it.
  - b. Assessing disclosures made under this whistleblower policy and their management, including:
    - i. subject to any permissions from the whistleblower, ensuring a whistleblower's identity is kept confidential;
    - ii. notifying the Directors where a disclosure is sufficiently serious;
    - iii. seeking legal advice on Birdon's statutory or other legal obligations arising from a disclosure made under this whistleblower policy, or the application of this whistleblower policy;
    - iv. assessing the risk of any detrimental conduct to a whistleblower, or other person, due to a disclosure made under this whistleblower policy, and ensuring the implementation of appropriate safeguards;

- v. determining whether a disclosure under this whistleblower policy will be investigated, and the scope and conduct of that investigation;
  - vi. where a whistleblower has consented to their identity being shared with the Whistleblower Officer, liaising with the whistleblower to obtain any necessary information, including any concerns the whistleblower holds in respect of victimisation or retaliation, and providing updates to the whistleblower on the management of their report; and
  - vii. in accordance with section 3, the Whistleblower Officer is also authorised to receive disclosures under this whistleblower policy from whistleblowers.
- 3. **Designated Disclosure Officers**, as stated in section 7, are senior managers of Birdon who are responsible for:
  - a. Receiving disclosures under this whistleblower policy, as relevant, from whistleblowers.
  - b. Seeking to obtain information from the whistleblower that:
    - i. where appropriate, assists Birdon to investigate the report effectively; and
    - ii. confirms whether the whistleblower holds any concern of victimisation or retaliation for themselves, or another person, due to making the report, and any assistance or support they may require.
  - c. Subject to any permissions from the whistleblower, ensuring the whistleblower's identity is kept confidential.
  - d. Disclosing any conflict of interest they may have in respect of a disclosure.
  - e. Ensuring the whistleblower has access to this whistleblower policy, is aware of the whistleblower protections in the Corporations Law or Tax Act as relevant, and the support available from Birdon.
  - f. Explaining the next steps they will take in handling the disclosure, including:
    - i. registering the disclosure with the Whistleblower Officer (ensuring confidentiality of the whistleblower's identity where consent to disclose their identity to the Whistleblower Officer has not been given by the whistleblower); and
    - ii. escalating the matter to the or designated officer in appropriate cases.
- 4. An **Investigator**, appointed by the Directors or Birdon's Designated Disclosure Officer, Whistleblower Officer, General Counsel or Birdon's legal representative, will have responsibility for:
  - a. Subject to any permissions from the whistleblower, ensuring a whistleblower's identity is kept confidential.
  - b. Conducting a:
    - i. confidential and privileged factual investigation of the disclosure for the purpose of providing Birdon with legal advice; or
    - ii. conducting a confidential factual investigation of the disclosure, including gathering evidence, interviewing witnesses, communicating with the whistleblower where they have consented to providing their identity to the Investigator, seeking assistance from internal and external consultants, and providing an investigation report with the Investigators findings to the Directors or the Whistleblower Officer.
- 5. **Line managers** and **supervisors** of Birdon play an important role in supporting the objectives of this whistleblower policy, and ensuring their direct reports can obtain information about the correct processes for making a disclosure or seeking further advice and support about whistleblowing. Line managers and supervisors are responsible for enforcing the importance of this whistleblower policy with their reports, together with why disclosing wrongdoing is so vital to Birdon's risk management framework.

6. All **employees** of Birdon are required, and all other persons eligible to make disclosures under this whistleblower policy are strongly encouraged, to report under this whistleblower policy if they reasonably suspect that conduct, or a state of affairs exists, in relation to Birdon that is a Disclosable Matter, as defined in section 1, whether engaged in by themselves or others.
7. All employees of Birdon, and persons providing services as an independent contractor or labour hire worker to Birdon, are required to:
  - a. Subject to a claim of privilege or self-incrimination, cooperate with an Investigator (see section 4), including by providing relevant documents and information or answering questions during the conduct of any investigation under this whistleblower policy.
  - b. Strictly maintain the confidentiality of a whistleblower's identity, whether they obtain that information directly or indirectly, in accordance with section 8.
  - c. Refrain from committing, or threatening to commit, any act of detrimental conduct to a whistleblower, or any other person, because they believe or suspect that the whistleblower, or another person, has made, may have made, proposes to make, or could make a disclosure that qualifies for protection under the Corporations Law or Tax Act, in accordance with section 11.

## 4. Seeking advice or support about the application of this whistleblower policy

Issues, queries and concerns regarding the application of this whistleblower policy can be raised with a Designated Disclosure Officer or an independent lawyer.

## 5. What can be reported under this whistleblower policy?

1. Eligible whistleblowers should make a disclosure under this whistleblower policy, and employees of Birdon must make a disclosure under this whistleblower policy, if they reasonably suspect that conduct, or a state of affairs exists, in relation to Birdon that is any of the following:
  - a. Misconduct, or an improper state of affairs or circumstances, in relation to Birdon.
  - b. Misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of Birdon, and where they consider the information may assist the recipient to perform functions and duties in relation to the tax affairs of Birdon.
  - c. In contravention of any law administered by Australian Securities and Investments Commission (**ASIC**) or Australian Prudential Regulation Authority (**APRA**) (see **Schedule 3** for a list of these laws).
  - d. Conduct that represents a danger to the public or the financial system (even if this conduct does not involve a breach of a particular law).
  - e. Conduct that is an offence against any law of the Commonwealth, where the offence is punishable by imprisonment for a period of 12 months or more.  
(Collectively referred to as **Disclosable Matters**.)
2. Disclosable Matters include conduct that either:
  - a. May or may not involve a contravention of any law.
  - b. May include conduct that indicates a systemic issue in Birdon.

- c. Relates to dishonest or unethical behaviour and practices.
  - d. May relate to business behaviour and practices that may cause consumer harm.
  - e. Is an exception to an excluded personal work-related grievance as defined in section 2.
  - f. Is prohibited under Birdon's values.
3. Without limiting the type of conduct that can be disclosed under this whistleblower policy, examples of conduct that is appropriate to disclose under this whistleblower policy includes conduct that is:
- a. Fraudulent or corrupt, such as money laundering or misappropriation of funds.
  - b. In breach of a law administered by ASIC or APRA, and a law of the Commonwealth punishable by 12 months imprisonment or more. Examples of conduct in breach of Corporations Law could include:
    - i. insider trading;
    - ii. insolvent trading;
    - iii. breach of the continuous disclosure rules;
    - iv. failure to keep accurate financial records;
    - v. falsification of accounts;
    - vi. failure of a director, or another officer, to act with the care and diligence a reasonable person would exercise, or to act in good faith in the best interests of the corporation, or to give notice of any material personal interest relating to the affairs of Birdon.
  - c. Illegal, such as theft, the sale or use of prohibited substances, violence or threatened violence, harassment or criminal damage to property.
  - d. Unethical, such as acting dishonestly, altering records without cause or permission, making false entries in records, engaging in questionable financial practices, offering or accepting a bribe.
  - e. Contrary to, or a serious breach of, codes and practices (including work practices) of Birdon.
  - f. Potentially damaging to Birdon, including conduct that may cause financial or non-financial loss to Birdon, or is otherwise detrimental to its interests.
  - g. Engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure, or is believed or suspected to have made, or be planning to make, a disclosure under this whistleblower policy.

## 6. What should not be reported under this whistleblower policy?

1. Subject to the exceptions in section 2, a Disclosable Matter does not include a **personal work-related grievance**, which concerns a grievance in relation to a whistleblower's employment, or former employment, with Birdon that has implications for the whistleblower personally. Examples of a personal work-related grievance include complaints an employee, or former employee, may hold concerning:
- a. The terms and conditions of their employment.
  - b. An interpersonal conflict with another employee.
  - c. Any disciplinary or performance management process.
  - d. The termination of their employment.

Personal work-related grievances should be reported under the relevant workplace policy of Birdon. Further information about Birdon's workplace policies can be obtained from the Birdon IMS.

2. A personal work-related grievance that has significant implications for Birdon, and wider ramifications than for the whistleblower personally, may be appropriate to disclose under this whistleblower policy as a Disclosable Matter. Similarly, where the grievance relates to detrimental conduct suffered by the

whistleblower because of making a previous whistleblower disclosure, or seeking legal advice about whistleblower protections, the matter should be reported under this whistleblower policy as a Disclosable Matter (see section 11). Without limiting the types of matters, examples of personal work-related grievances that could be reported as a Disclosable Matter under this whistleblower policy include:

- a. Mixed reports, for instance where a concern regarding corporate misconduct or wrongdoing is accompanied by a personal work-related grievance, or a personal work-related grievance includes information about corporate misconduct or wrongdoing.
  - b. Where the matter suggests a behaviour or conduct extending beyond the individual's personal circumstances, for instance an individual claim of bullying has indicated that there may be a more general culture of bullying or harassment within Birdon.
  - c. Birdon, or its officers or agents, has breached an employment (or other) law punishable by more than 12 months imprisonment, or has engaged in conduct that represents a danger to the public.
3. If unsure whether a grievance is a Disclosable Matter under this whistleblower policy, or a personal work-related grievance that is more appropriately managed through a relevant workplace behaviour policy of Birdon, seek guidance from the Whistleblower Officer.

## 7. To whom, and how, should disclosures under this whistleblower policy be made?

1. A person to whom this whistleblower policy applies should report Disclosable Matters to one of the following persons (each authorised by Birdon to receive disclosures from persons to whom this whistleblower policy applies, and each referred to in this capacity as a **Designated Disclosure Officer**):
  - a. Manager People and Culture (the **Whistleblower Officer** and a **Designated Disclosure Officer**)
  - b. General Counsel (a **Designated Disclosure Officer**)
2. Whistleblowers can report Disclosable Matters to a Designated Disclosure Officer using the contact details below:
  - a. [People@birdon.com.au](mailto:People@birdon.com.au)
  - b. [notices@birdon.com.au](mailto:notices@birdon.com.au)
3. Wherever possible, to assist Birdon handle a disclosure made under this whistleblower policy appropriately, the following information about a Disclosable Matter should be provided to the Designated Disclosure Officer in a clear and factual way:
  - a. The whistleblower's full name, address and preferred contact details. While there is no requirement for a whistleblower to provide these details, and disclosures can be made anonymously (see section 5), if comfortable doing so this information greatly assists Birdon to investigate the Disclosable Matter and provide the whistleblower with appropriate protections from any detrimental conduct.
  - b. The entity, division or department which the Disclosable Matter relates to.
  - c. The nature of the alleged wrongdoing including, where relevant, details of the person believed to have committed the wrongdoing, or is aware of, or involved in, the wrongdoing.
  - d. When and where the wrongdoing occurred.
  - e. Anyone else who may verify the claim, or possible witnesses.
  - f. If the whistleblower is concerned about any possible victimisation or acts of reprisal for reporting the matter or have been subject to detrimental conduct for a previous report of a Disclosable Matter, and any assistance or support sought from Birdon.

- g. Any supporting information (for instance, emails, documents, text messages, file notes, photos).
- 4. Whistleblowers can also report Disclosable Matters by:  
Writing a report, preferably addressing the matters raised in section 3, and mailing it to 4 Glen Ewan rd, Port Macquarie, NSW 2444 where it will be received by the Whistleblower Officer.
- 5. Disclosures of Disclosable Matters can be made anonymously, and a whistleblower may choose to remain anonymous, including during any investigation into the disclosure. If the disclosure is **not** made anonymously, or an anonymous whistleblower consents to limited disclosure of their identity (for instance, to the Whistleblower Officer and an Investigator), Birdon will take all reasonable steps to ensure that the whistleblower's identity remains confidential in accordance with section 8 and, where applicable, Schedule 1 or Schedule 2. A whistleblower who provides their identity when making a disclosure under this whistleblower policy:
  - a. Can expect Birdon to provide the whistleblower with appropriate protection and support (see section 11).
  - b. Enables any Investigator appointed to investigate the matter with an opportunity to clarify or seek further information from the whistleblower. Without further information, Birdon may be unable to investigate the report (see section 9).
- 6. If the whistleblower has provided their contact details, a Disclosable Matter received by a Designated Disclosure Officer, an officer, director, secretary or senior manager of Birdon, or an employee or officer with functions or duties for the tax affairs of Birdon, will be acknowledged as received within a reasonable time frame.

## 8. Confidentiality of a whistleblower's identity

- 1. Birdon is committed to protecting the identity of all person's making disclosures under this whistleblower policy.
- 2. Where a disclosure received under this whistleblower policy is:
  - a. A protected disclosure under the Corporations Law or the Tax Act, the confidentiality of a whistleblower's identity is protected under the whistleblower protection regimes in those statutes, which include statutory sanctions and remedies where confidentiality is breached (see Schedule 1 and Schedule 2).
  - b. Not a protected disclosure under the Corporations Law or the Tax Act, including where the whistleblower is not an eligible whistleblower, Birdon will use its best endeavours to not disclose the identity of the whistleblower in accordance with this section 8.
- 3. Birdon will take the following steps to ensure the confidentiality of the identity of an eligible whistleblower's identity:
  - a. The person receiving the disclosure will seek permission from the whistleblower to share their identity with the Whistleblower Officer or the Directors, and a restricted number of persons who may be involved in managing or investigating the disclosure. Only persons who have been both authorised by the whistleblower and are directly involved in handling and investigating the disclosure will be made aware of the whistleblower's identity (subject to the whistleblower's consent) or information that is likely to lead to the identification of the whistleblower.
  - b. Where a whistleblower does not give their permission to share their identity, or share their identity with particular persons involved in managing or investigating the disclosure, for instance with an

appointed Investigator, the person receiving the disclosure will disclose the information contained in the disclosure only if:

- i. the information does not disclose the whistleblower's identity;
  - ii. they have taken all reasonable steps to reduce the risk that the whistleblower will be identified from the information; and
  - iii. it is reasonably necessary for investigating the issues raised in the disclosure.
- c. Information relating to the disclosure will be stored confidentially and securely in Birdon's whistleblower database, and only available for access by the Whistleblower Officer and others involved in receiving, managing and investigating the disclosure.
  - d. All persons handling and investigating disclosures will receive appropriate training in their obligations in respect of the confidentiality of a whistleblower's identity, and how to ensure the security of information and communications in respect of the disclosure.
4. Whistleblowers making a disclosure under this whistleblower policy should be aware that people may be able to guess or establish their identity where they:
    - a. Have mentioned to other people they are considering making a disclosure.
    - b. Have complained or raised concerns with other people about the subject matter of the disclosure.
    - c. Are one of a very small number of people with access to the information the subject of the disclosure.
    - d. Are disclosing information that has been told to them privately and in confidence.

## 9. Investigation of disclosures

Disclosures will be investigated appropriately, confidentially, and independently.

## 10. Fair treatment of persons named in a disclosure

Birdon will ensure fair treatment of persons mentioned in disclosures.

## 11. Protection against detrimental conduct

1. Birdon is committed to protecting whistleblowers, and other persons, from detrimental conduct, or threats of detrimental conduct, because a person believes or suspects that the whistleblower (or another person) has made, may have made, proposes to make, or could make a disclosure that qualifies for protection under the Corporations Law or Tax Act (see Schedule 1 and Schedule 2). Birdon will use its best endeavours to provide the protections to whistleblowers, and other persons, reflected in this section 11 of the whistleblower policy where the disclosure is not protected under the Corporations Law or Tax Act.
2. A person cannot:
  - a. Engage in conduct that causes detriment to a whistleblower, or another person, if:
    - i. the person believes or suspects that the whistleblower (or another person) made, may have made, proposes to make, or could make, a disclosure that qualifies for protection under the Corporations Law or Tax Act (see Schedule 1 or Schedule 2); and
  - b. the belief or suspicion is the reason, or part of the reason, for the conduct.

- i. Threaten to cause detriment to a whistleblower (or another person) in relation to a disclosure that qualifies for protection under the Corporations Law or Tax Act (see Schedule 1 and Schedule 2). A threat may be implied, or conditional, or unconditional.
3. Examples of detrimental conduct for the purpose of section 1 include:
  - a. Dismissal of an employee.
  - b. Injury of an employee in their employment.
  - c. Alteration of an employee's position or duties to their disadvantage.
  - d. Discrimination between an employee and another employee of the same employer.
  - e. Harassment or intimidation of a person.
  - f. Harm or injury to a person, including psychological harm.
  - g. Damage to a person's property.
  - h. Damage to a person's reputation.
  - i. Damage to a person's business or financial position.
  - j. Any other damage to a person.
4. As soon as possible after receiving notification of a disclosure under this whistleblower policy, the Whistleblower Officer, will assess the risk of detriment to the whistleblower, or another person, arising from the disclosure. Birdon will protect whistleblowers from detriment as required by law.
5. Reasonable management and administrative action conducted in a reasonable manner by Birdon will not constitute detrimental conduct against a whistleblower or another person, including (but not limited to):
  - a. Management or administrative action taken to protect the whistleblower or another person from detriment (such as those described in **Error! Bookmark not defined.****Error! Reference source not found.**).
  - b. Performance management or disciplinary processes conducted in accordance with Birdon's relevant People and Culture Policy.
6. A whistleblower, or other person, who believes they have suffered detriment in the circumstances described in section 2 should do any of the following:
  - a. Report their concern to the Whistleblower Officer.
  - b. Seek guidance and support from a Designated Disclosure Officer.
  - c. Seek independent legal advice.
7. A whistleblower, or other person, who has suffered loss because of detriment suffered in the circumstances described in section 2 can seek compensation and other remedies through the courts.

## 12. Other protections available to whistleblowers

1. Where an eligible whistleblower makes a disclosure that qualifies for protection under the Corporations Law or Tax Act (see Schedule 1 or Schedule 2), the whistleblower is protected from any of the following in relation to the disclosure:
  - a. Civil liability (for instance, legal action against the whistleblower for breach of an employment contract, duty of confidentiality or another contractual obligation).

- b. Criminal liability (for instance, the attempted prosecution of the whistleblower for unlawfully releasing information, or other use of the disclosure against the whistleblower in a prosecution, other than making a false disclosure).
  - c. Administrative liability (for instance, disciplinary action for making the disclosure).
- 2. The protections available to whistleblowers who make a disclosure qualifying for protection under the Corporations Law and the Tax Act do not, however, grant the whistleblower immunity for any misconduct the whistleblower has engaged in that is revealed in their disclosure.
- 3. Whistleblowers may also have access to other statutory protections under anti-discrimination and equal opportunity legislation, and the *Fair Work Act 2009* (Cth), or under the common law and their contracts of employment or engagement with Birdon.

## 13. Communication and awareness of this whistleblower policy

Birdon will make this policy available to all officers and employees.

## 14. Breaches of this whistleblower policy

- 1. Birdon is strongly committed to:
  - a. Subject to section 8, ensuring the identity of a whistleblower remains confidential.
  - b. In accordance with section 9, investigating disclosures made under this whistleblower policy.
  - c. Subject to section 11, ensuring a whistleblower, or other person, is not subject to, or threatened with, detrimental conduct because a person believes a disclosure under this whistleblower policy has been made or could be made.
- 2. Any employee who breaches this whistleblower policy, including breaching an obligation to keep a whistleblower's identity confidential, refusing to participate or cooperate with an investigation into a whistleblower disclosure, or engaging in detrimental conduct against a whistleblower or another person, will face a disciplinary process in accordance with Birdon's relevant People & Culture policy relating to performance management, which could result in the termination of their employment.
- 3. Birdon may terminate its relationship with other individuals and entities providing goods or services to Birdon if they breach this whistleblower policy.

## 15. Monitoring and reviewing this whistleblower policy

Birdon will periodically review this policy and implement changes as required

## Schedule 1

### When does a disclosure qualify for protection under the Corporations Law, and what protections and immunities are available?

#### 1. Disclosures qualifying for protection under the Corporations Law

- 1.1 Eligible whistleblowers may be able to obtain certain statutory protections and immunities where they make a disclosure that qualifies for protection under Part 9.4AAA of the Corporations Law.
- 1.2 This Schedule 1 provides an overview of the requirements that must be met for a disclosure of information to qualify for protection under Part 9.4AAA of the Corporations Law. To avoid doubt, although many of the protections and immunities are mirrored in this whistleblower policy, the protections in Part 9.4AAA of the Corporations Law are in addition to protections and immunities specified in this whistleblower policy.
- 1.3 This Schedule 1 is intended for information purposes only and should not be taken as the provision of legal advice in respect of the operation and application of the whistleblower regime in Part 9.4AAA of the Corporations Law. Legal advice should be obtained from an independent legal practitioner.

#### 2. Conditions that must be met for a disclosure to qualify for protection under the Corporations Law

- 2.1 The information disclosed relates to a **regulated entity**, a term defined by the Corporations Law that includes a company and constitutional corporation such as Birdon.
- 2.2 The whistleblower making the disclosure is an **eligible whistleblower**, defined in the Corporations Law as an individual who is, or has been, any of the following:
  - (a) An officer or employee of the regulated entity.
  - (b) An individual who supplies services or goods to the regulated entity, or the employee of a person who supplies services or goods to the regulated entity.
  - (c) An individual who is an associate of the regulated entity.
  - (d) A relative or dependant of an individual referred to in paragraph 2.2(a) to paragraph 2.2(c) of this Schedule 1, or the spouse of a dependant of an individual referred to above.
- 2.3 The disclosure is made to a person who is eligible to receive a disclosure under Part 9.4AAA of the Corporations Law, which includes:
  - (a) A person authorised by a regulated entity to receive a disclosure, which for Birdon are the Designated Disclosure Officers identified in section 7.
  - (b) An officer or senior manager of a regulated entity.
  - (c) ASIC or APRA.
  - (d) An appointed auditor of a regulated entity.
  - (e) In limited circumstances, to a journalist or a member of a federal, state or territory Parliament (see paragraph 3.1 of this Schedule 1).

- 2.4** Subject to paragraph 2.5 of this Schedule 1, the disclosure is about matters the eligible whistleblower has reasonable grounds to suspect may concern the following conduct by the regulated entity (these matters are described in section 5 as **Disclosable Matters**):
- (a) Misconduct or an improper state of affairs or circumstances in relation to the regulated entity (or a related body corporate).
  - (b) Conduct that constitutes an offence against, or contravention of, a law administered by ASIC or APRA (see Schedule 3 for an outline of the laws administered by ASIC or APRA).
  - (c) Conduct that constitutes an offence against another law of the Commonwealth punishable by more than 12 months imprisonment.
  - (d) Conduct that is a danger to the public or the financial system.
- 2.5** The disclosure is not a personal work-related grievance, being a disclosure of information concerning a grievance about any matter in relation to the eligible whistleblower's employment, or former employment, or having (or tending to have) implications for the whistleblower personally. However, a personal work-related grievance will be disclosure qualifying for protection under Part 9.4AAA of the Corporations Law if it either:
- (a) Has significant implications for the regulated entity to which it relates, or wider ramifications than those that are personal to the whistleblower.
  - (b) Relates to a grievance by the eligible whistleblower about detrimental conduct suffered or threatened due to a person believing or suspecting that a disclosure qualifying for protection under Part 9.4AAA of the Corporations Law has been made, may be made, is proposed to be made, or could be made.
- 2.6** A disclosure that meets the conditions in paragraph 2.1 to paragraph 2.5 of this Schedule 1 is referred to as a **qualifying disclosure**.
- 3. Other disclosures that qualify for protection under the Corporations Law**
- 3.1** There are two further categories of disclosure that may also be protected under Part 9.4AAA of the Corporations Law:
- (a) In extreme cases, where an eligible whistleblower makes a disclosure to the media or a Member of Parliament in relation to a regulated entity. To be protected, the whistleblower must already have made a **qualifying disclosure** (see paragraph 2.6 of this Schedule 1), certain written notifications in respect of that qualifying disclosure must have been made by the eligible whistleblower to the body that received it, and either:
    - (i) the disclosure was in respect of a substantial and imminent danger to someone's health and safety, or the natural environment; or
    - (ii) disclosing the information was in the public interest.
  - (b) If the whistleblower makes a disclosure of information to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower regime found in Part 9.4AAA of the Corporations Law. This category does not carry any of the requirements of the disclosure to be a qualifying disclosure (see paragraph 2.6 of this Schedule 1).
- 3.2** A disclosure that meets the conditions in paragraph 3.1 of this Schedule 1 is referred to as a **protected disclosure**.

#### **4. Protections and immunities available where a qualifying or protected disclosure is made under the Corporations Law**

Where a qualifying or protected disclosure is made (see paragraph 2.6 and paragraph 3.2 of this Schedule 1), Part 9.4AAA of the Corporations Law provides the following protections and immunities:

- (a) Protection of a whistleblower's identity (see paragraph 5 of this Schedule 1).
- (b) Protecting a whistleblower, or other person, from a range of detrimental conduct (often referred to as victimisation or retaliation) because another person believes or suspects that a qualifying or protected disclosure has been made, may be made, is proposed to be made, or could be made (see paragraph 6 of this Schedule 1).
- (c) Providing a whistleblower with a range of legal immunities for making a qualifying or protected disclosure.

#### **5. Protection of the Eligible Whistleblower's identity**

5.1 Part 9.4AAA of the Corporations Law contains several provisions to protect the identity of a whistleblower who has made a qualifying or protected disclosure by:

- (a) Allowing for whistleblowers to make anonymous disclosures.
- (b) Subject to a handful of exceptions that authorise the disclosure of a whistleblower's identity (including with the whistleblower's consent or to a relevant regulator or the Australian Federal Police, or to a lawyer for the purpose of obtaining advice about the operation of Part 9.4AAA of the Corporations Law), making it a criminal and civil penalty offence for a person to whom a qualifying or protected disclosure is made, or any other person who has obtained the information directly or indirectly, to disclose:
  - (i) the identity of the whistleblower; or
  - (ii) information that is likely to lead to the identification of the whistleblower.
- (c) Prohibiting the disclosure of a whistleblower's identity by the recipient of a qualifying or protected disclosure to a court or tribunal.

5.2 It is not an offence for a person to disclose information regarding a qualifying or protected disclosure **without** revealing the identity of the whistleblower.

#### **6. Protection against detrimental conduct**

6.1 Part 9.4AAA of the Corporations Law protects persons from detrimental conduct when a qualifying or protected disclosure has been made, is believed or suspected to have been made, or could be made, and includes significant criminal and civil sanctions to perpetrators should such actions occur.

6.2 Detrimental conduct is defined broadly and includes conduct (without limitation) such as:

- (a) Dismissal of an employee.
- (b) Injury of an employee in their employment.
- (c) Alteration of an employee's position or duties to their disadvantage.
- (d) Discrimination between an employee and other employees of the same employer.
- (e) Harassment or intimidation of a person.

- (f) Harm or injury to a person, including psychological harm.
- (g) Damage to a person's property.
- (h) Damage to a person's reputation.
- (i) Damage to a person's business or financial position.
- (j) Any other damage to a person.

6.3 It is both a criminal and civil penalty offence to engage in detrimental conduct due to a belief or suspicion that a qualifying or protected disclosure has been made, is believed to have been made, or could be made. Features common to both sanctions include:

- (a) A protection against detrimental conduct (see paragraph 6.2 of this Schedule 1).
- (b) The victim protected may be a whistleblower or may be another person who has suffered damage because of a victimiser's conduct.
- (c) Threats of detrimental conduct can be express or implied, conditional or unconditional.

## **7. Immunities**

Where a qualifying or protected disclosure is made, the whistleblower is granted certain immunities from liability, including:

- (a) The whistleblower is not subject to civil, criminal or administrative liability.
- (b) No contractual or other remedy may be enforced against the whistleblower.
- (c) Information disclosed by the whistleblower is not admissible against them, other than in proceedings concerning the falsity of the information provided.

## Schedule 2

### When does a disclosure qualify for protection under the Tax Act, and what protections and immunities are available?

#### 1. Disclosures qualifying for protection under the Tax Act

- 1.1 Eligible whistleblowers may be able to obtain certain statutory protections and immunities where they make a disclosure that qualifies for protection under Part IVD of the Tax Act.
- 1.2 This Schedule 2 provides an overview of the requirements that must be met for a disclosure of information to qualify for protection under Part IVD of the Tax Act. To avoid doubt, although many of the protections and immunities are mirrored in this whistleblower policy, the protections in Part IVD of the Tax Act are in addition to protections and immunities specified in this whistleblower policy.
- 1.3 This Schedule 2 is intended for information purposes only and should not be taken as the provision of legal advice in respect of the operation and application of the whistleblower regime in Part IVD of the Tax Act. Legal advice should be obtained from an independent legal practitioner.

#### 2. Conditions that must be met for a disclosure to qualify for protection under the Tax Act when made to an eligible recipient

- 2.1 The information disclosed relates to an **entity**, a term defined in the Tax Act that includes a company, such as Birdon.
- 2.2 The whistleblower making the disclosure is an **eligible whistleblower**, defined in the Tax Act as an individual who is, or has been, any of the following:
  - (a) An officer (as defined in the Corporations Law) or employee of the entity.
  - (b) An individual who supplies services or goods to the entity, or the employee of a person who supplies services or goods to the entity.
  - (c) An individual who is an associate (as defined in the *Income Tax Assessment Act 1936*) of the regulated entity.
  - (d) A spouse, or child of an individual referred to in paragraph 2.2(a) to paragraph 2.2(c) of this Schedule 2, or a dependant of an individual referred to above or such an individual's spouse.
- 2.3 The disclosure is made to a person eligible to receive a qualifying disclosure under Part IVD of the Tax Act, which includes:
  - (a) An eligible recipient of the entity, which is:
    - (i) a person authorised by the entity to receive disclosures that may qualify for protection under Part IVD of the Tax Act, which for Birdon are the Designated Disclosure Officers identified in section 7);
    - (ii) a director, secretary or senior manager of the entity;
    - (iii) any other employee or officer of the entity who has functions or duties that relate to the tax affairs of the entity.
    - (iv) any auditor of the entity, or a member of an audit team conducting an audit of the entity or a related body corporate; or

(v) a registered tax agent or BAS agent to the entity.

(b) The Commissioner of Taxation.

2.4 Where the disclosure of information by an eligible whistleblower is:

- (a) Made to the Commissioner of Taxation, and the eligible whistleblower considers that the information may assist the Commissioner to perform their functions or duties under a taxation law (as defined in the *Income Tax Assessment Act 1997* (Cth)) in relation to the entity or an associated of the entity.
- (b) Made to an eligible recipient of the entity, and the eligible whistleblower:
  - (i) has reasonable grounds to suspect the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the entity or an associated of the entity; and
  - (ii) considers the information may assist the eligible recipient to perform functions or duties in relation to the tax affairs of the entity or an associated of the entity.

2.5 A disclosure of information may also qualify for protection under Part IVD of the Tax Act if the disclosure of information by an individual is made to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the operation of Part IVD of the Tax Act.

2.6 A disclosure that meets all of the requirements in paragraph 2.1 to paragraph 2.4 of this Schedule 2, as well as the disclosure in paragraph 2.5 of this Schedule 2, is referred to as a qualifying disclosure.

### 3. Protections and immunities available when a qualifying disclosure is made under the Tax Act

Where a qualifying disclosure is made (see paragraph 2.6 of this Schedule 2), Part IVD of the Tax Act provides the following protections and immunities:

- (a) Protection of a whistleblower's identity (see paragraph 4 of this Schedule 2).
- (b) Protecting a whistleblower, or other person, from a range of detrimental conduct (often referred to as victimisation or retaliation) because another person believes or suspects that a qualifying or protected disclosure has been made, may be made, is proposed to be made, or could be made (see paragraph 5 of this Schedule 2).
- (c) Providing a whistleblower with a range of legal immunities for making a qualifying or protected disclosure (see paragraph 6 of this Schedule 2).

### 4. Protection of the eligible whistleblower's identity

4.1 Part IVD of the Tax Act contains several provisions to protect the identity of a whistleblower who has made a qualifying disclosure by:

- (a) Allowing for whistleblowers to make anonymous disclosures.
- (b) Subject to a handful of exceptions that authorise the disclosure of a whistleblower's identity (including with the whistleblower's consent or to the Commissioner of Taxation or the Australian Federal Police, or to a lawyer for the purpose of obtaining advice about the operation of Part IVD of the Tax Act), making it a criminal offence for a person to whom a qualifying disclosure is made, or any other person who has obtained the information directly or indirectly, to disclose any of the following:
  - (i) the identity of the whistleblower; and

(ii) information that is likely to lead to the identification of the whistleblower.

(c) Prohibiting the disclosure of a whistleblower's identity by the recipient of a qualifying disclosure to a court or tribunal.

4.2 It is not an offence for a person to disclose information regarding a qualifying disclosure without revealing the identity of the whistleblower.

## **5. Protection from detrimental conduct**

5.1 Part IVD of the Tax Act protects persons from detrimental conduct when a qualifying disclosure has been made, is believed or suspected to have been made, or could be made, and includes significant criminal and civil sanctions to perpetrators should such actions occur.

5.2 Detrimental conduct is defined broadly and includes conduct (without limitation) such as:

- (a) Dismissal of an employee.
- (b) Injury of an employee in their employment.
- (c) Alteration of an employee's position or duties to their disadvantage.
- (d) Discrimination between an employee and other employees of the same employer.
- (e) Harassment or intimidation of a person.
- (f) Harm or injury to a person, including psychological harm.
- (g) Damage to a person's property.
- (h) Damage to a person's reputation.
- (i) Damage to a person's business or financial position.
- (j) Any other damage to a person.

5.3 It is both a criminal and civil penalty offence to engage detrimental conduct due to a belief or suspicion that a disclosure has been made, is believed to have been made, or could be made. Features common to both sanctions include:

- (a) A protection against detrimental conduct (see paragraph 5.2 of this Schedule 2).
- (b) The victim protected may be a whistleblower or may be another person who has suffered damage because of a victimiser's conduct.
- (c) Threats of detrimental conduct can be express or implied, conditional or unconditional.

## **6. Immunities**

6.1 Where a qualifying disclosure is made, the whistleblower is granted certain immunities from liability, including:

- (a) The whistleblower is not subject to civil, criminal or administrative liability.
- (b) No contractual or other remedy may be enforced against the whistleblower.

- (c) Information disclosed by the whistleblower is not admissible against them, other than in proceedings concerning the falsity of the information provided.

## Schedule 3

### Statutes a whistleblower may suspect have been contravened for the purpose of a Disclosable Matter

1. For the purpose of section 5.1c, the laws are the:
  - (1) Corporations Law.
  - (2) *Australian Securities and Investments Commission Act 2001* (Cth).
  - (3) *Banking Act 1959* (Cth).
  - (4) *Financial Sector (Collection of Data) Act 2001* (Cth).
  - (5) *Insurance Act 1973* (Cth).
  - (6) *Life Insurance Act 1995* (Cth).
  - (7) *National Consumer Credit Protection Act 2009* (Cth).
  - (8) *Superannuation Industry (Supervision) Act 1993* (Cth).
  - (9) An instrument made under any of the Acts in this Schedule 3.



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