

# BOARD POLICY 403



# WHISTLEBLOWER

VERSION	REVIEW COMPLETED	BOARD MEETING	NOTES/ COMMENTS
1	Sep 2019	Oct 2019	Initial document
2			
3			
4			
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<b>APPLIES TO</b>	All CEnet staff (including employees and contractors)	
<b>OWNER</b>	CEnet Board of Directors	
<b>APPROVED BY</b>	CEnet Board of Directors	23 October 2019
<b>REVIEW CYCLE</b>	Biennial	
<b>NEXT REVIEW DATE</b>	October 2021	
<b>RELATED POLICY DOCUMENTS</b>	Board Policy 103: Privacy Board Policy 304: Fraud and Corruption Prevention Board Policy 404: Code of Ethics Board Policy 406: Dispute Resolution Board Policy 502: Code of Conduct CEO Policy 510: Complaints and Grievances	
<b>SUPPORTING DOCUMENTS</b>	Nil	

## 1. Purpose

CEnet is committed to the highest standards of legal, ethical and moral conduct. This includes operating legally (in accordance with applicable legislation and regulation), properly (in accordance with organisational policy and procedures), and ethically (in accordance with recognised ethical principles). Employees are expected to cooperate with the organisation in maintaining legal, proper, and ethical operations, if necessary by reporting improper conduct by other people. Correspondingly, employees who do assist in maintaining legal, proper, and ethical operations should not be penalised in any way.

The objectives of this policy are to:

- Provide a person making an allegation of improper conduct with a clear framework within which to make the allegation;
- Ensure any reports of improper conduct are dealt with appropriately;
- Provide Whistleblowers with a clear understanding of how allegations will be handled;
- Provide Whistleblowers with appropriate protections including for victimisation and retaliation;
- Ensure Whistleblowers are aware of and have the appropriate legal protections;
- Support Whistleblowers throughout the reporting process; and
- Afford natural justice and procedural fairness to anyone who is the subject of an allegation of improper conduct.



This policy provides a framework for Whistleblowers to make an allegation of improper conduct by providing reasonable protections for Whistleblowers, including those required by law, who, acting honestly on reasonable grounds and with genuine belief that the information in an allegation is true or likely to be true, and ensuring the allegations are properly and lawfully investigated.

## 2. Definitions

### *Whistleblower*

A Whistleblower is a current or former:

- employee of CEnet, or a related company or organisation;
- officer of CEnet, or a related company or organisation;
- contractor, or an employee of a contractor, who has supplied goods or services to CEnet, or a related company or organisation. This can include volunteers;
- associate of CEnet, such as a company or organisation with whom CEnet acts in concert; or
- spouse, relative or dependant of one of the people referred to above.

who, whether anonymously or not, makes, attempts to make or wishes to make a report in connection with improper conduct by CEnet, or an officer or employee of CEnet and wishes to avail themselves of protection against reprisal for having made the report.

A company or organisation is related to CEnet in accordance with the requirements of the Corporations Act 2001.

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### *Improper conduct*

Misconduct or an improper state of affairs or circumstances that breaches the law, organisational policy, or generally recognised principles of ethics including:

- dishonest, corrupt or illegal conduct
- fraud, theft, money laundering or misappropriation;
- offering or accepting a bribe;
- maladministration;
- damage or sabotage of CEnet's facilities or resources;
- harassment, violence or unlawful discrimination;
- a serious breach of CEnet's policies and procedures;
- practices endangering the health or safety of the staff, volunteers, or the general public; and
- practices endangering the environment.

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### *Reasonable grounds*

Means that a reasonable person in the position of the person making the allegation would also suspect the information indicates improper conduct.



## 3. Policy Statements

### 3.1. Complaint

- 3.1.1. Where an employee of CEnet believes in good faith on reasonable grounds that CEnet, any other employee, volunteer, or contractor has breached a law, organisational policy, or generally recognised principles of ethics, that employee must report their concern to:
- their supervisor: or, if they feel that their supervisor may be complicit in the breach,
  - the CEO: or, if they feel that the CEO may be complicit in the breach,
  - the organisation's nominated Whistleblower Protection Officer, or
  - otherwise in accordance with laws and regulations.
- 3.1.2. The Board of CEnet may nominate external persons to whom or agencies to which disclosures may be made under the protections offered under this policy. Where such a nomination is made, staff and volunteers will be informed by any appropriate method. Currently available Whistleblower reporting options include the online and reporting facilities outlined in the Appendix to this policy. These are also for reporting allegations of improper conduct anonymously.
- 3.1.3. Evidence to support such concerns should be brought forward at this time if it exists. The absence of such evidence will be taken into account in subsequent consideration of whether to open an investigation into the matter. However, absence of such evidence is not an absolute bar to the activation of CEnet's investigative procedures. The existence of such a concern is sufficient to trigger reporting responsibilities.
- 3.1.4. Reporting such a breach does not necessarily absolve the complainant from the consequences of any involvement on their own part in the misconduct complained of.
- 3.1.5. In contemplating the use of this policy, a person should consider whether the matter of concern may be more appropriately raised under either the organisation's constitutional grievance procedures or its disputes resolution policy.

### 3.2. Protection

- 3.2.1. No person is to be personally disadvantaged for reporting wrongdoing. Not only is it illegal but it directly opposes Cent's values. CEnet is committed to maintaining an environment where legitimate concerns are able to be reported without fear of retaliatory action or retribution.
- 3.2.2. When a person makes an allegation:
- Their identity will remain confidential according to their wishes, insofar as it may be overridden by due process of law;
  - They will be protected from reprisal, discrimination, harassment, or victimisation for making the disclosure;



- An independent internal inquiry will be conducted;
- Issues identified from the inquiry/investigation will be resolved and/or rectified;
- They will be informed about the outcome; and
- Any retaliation for having made the disclosure will be treated as a serious wrongdoing under this Policy.

3.2.3. To be entitled to the Whistleblower legal protections you must make your disclosure to:

- a director, company secretary, company officer, or senior manager of CEnet or a related company or organisation;
- the auditor, or a member of the audit team, of CEnet or a related company or organisation;
- an actuary of CEnet, or a related company or organisation;
- a person authorised by CEnet to receive Whistleblower disclosures;
- the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA) (Note the Australian Charities and Not-for-profits Commission (ACNC) is not a qualifying recipient for the purposes of gaining these legal protections), or
- your lawyer.

3.2.4. To qualify for protection, the Whistleblower must have reasonable grounds to suspect that the information they will disclose indicates improper conduct.

3.2.5. Where anonymity has been requested the complainant is required to maintain confidentiality regarding the issue on their own account and to refrain from discussing the matter with any unauthorised persons.

3.2.6. These procedures do not authorise any employee to inform commercial or social media of their concern, and do not offer protection to any employee who does so, unless done in accordance with the law. If this was to be considered an appropriate action be taken by a person CEnet recommends that the person first consult their lawyer.

3.2.7. While CEnet would prefer Whistleblowers to disclose their identity in order to facilitate any investigation, an independent Whistleblower Service has been established to enable reports to be made anonymously and confidentially. These details are set out in the Appendix to this policy.

### **3.3. Investigation**

3.3.1. Any person within CEnet to whom such a disclosure is made shall:

- if they believe the conduct complained of to be unquestionably trivial or fanciful, dismiss the allegation and notify the person making the allegation of their decision;
- if they believe the conduct complained of to be neither trivial nor fanciful, ensure that the allegation is investigated, a finding is made, and the person making the allegation is informed of the finding.



- 3.3.2. Terms of reference for the investigation will be drawn up, in consultation with the CEO, or if CEO is considered complicit in the breach, a director or company secretary, to clarify the key issues to be investigated.
- 3.3.3. The principles of procedural fairness (natural justice) will be observed. In particular, where adverse comment about a person is likely to be included in a report, the person affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised.
- 3.3.4. A report will be prepared when an investigation is complete. This report will include:
- the allegations;
  - a statement of all relevant findings of fact and the evidence relied upon in reaching any conclusions;
  - the conclusions reached (including the damage caused, if any, and the impact on the organisation and other affected parties) and their basis;
  - recommendations based on those conclusions to address any wrongdoing identified and any other matters arising during the investigation.
- 3.3.5. The report will be provided to the person making the allegation (with, if necessary, any applicable confidentiality stipulations).

### **3.4. Other**

- 3.4.1. Whistleblowers, or potential Whistleblowers, may be compensated for any loss, damage, or injury they suffer.
- 3.4.2. If a person breaches a Whistleblower's confidentiality or causes detriment to a Whistleblower because of their disclosure, the person may face criminal or civil penalties

## **4. Responsibilities**

### **4.1 Board of Directors**

Ref	Responsibility
1.	Approving this policy and nominating the Whistleblower Protection Officer.
2.	Receiving and noting reports from the CEO on matters reported and investigated, and monitoring remedial actions where applicable.

### **4.2 Chief Executive Officer (CEO)**

Ref	Responsibility
1.	Implementation of this policy.
2.	Ensuring all stakeholders are informed in regard to the contents of the policy.
3.	Ensuring complaints made are properly investigated and acted upon.
4.	Reporting to the Board on complaints made and outcomes of investigations.



### 4.3 Whistleblower Protection Officer

Ref	Responsibility
1.	Ensuring proper records are kept in regards to investigations and in a secure format.
2.	Ensuring issues of confidentiality are appropriately addressed in relation to investigations.
3.	Providing mentoring and other support as deemed necessary to the Whistleblower.
4.	Keeping the Whistleblower informed of the progress and outcomes of the investigation as appropriate and subject to privacy considerations.

### 4.4 Staff

Ref	Responsibility
1.	To report breaches of general law, organisational policy, or generally recognised principles of ethics in accordance with this policy to a person authorised to take action on such breaches.

## 5. Guidance

- Treasury Laws Amendment (enhancing Whistleblower Protections Act 2019)
- Corporations Act 2001
- ASIC Guidance – Whistleblower rights and protections
- ACNC Guidance – Whistleblower Protections

## 6. Monitoring Arrangements

Compliance with this Policy is subject to CEnet's monitoring and review procedures including the annual compliance review program overseen by the Audit & Risk Management Committee.

**END OF POLICY**