

# WHISTLEBLOWING AT YOUR NOT-FOR-PROFIT

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A leader's guide



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**This publication has been developed by Our Community and Your Call, who have partnered to improve the ability of not-for-profit organisations to implement best-practice whistleblowing programs.**

**Your Call is a Certified B Corporation providing consulting and 24/7 independent whistleblowing services to some of Australia and New Zealand's best-known not-for-profit organisations.**

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**Whistleblowing at Your Not-for-profit: A leader's guide**

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# INTRODUCTION

Whistleblowing plays a crucial role in managing risk and cultivating an ethical culture in your not-for-profit organisation. It is an essential and effective tool in your good governance toolkit.

**A whistleblower** is a person associated with your organisation – a board member, manager, employee, contractor or volunteer – who reports known or reasonably suspected misconduct within the organisation. The disclosure may be reported openly or anonymously.

**Whistleblower protection** refers to protecting whistleblowers against reprisals following reporting.

**“Misconduct”** embraces breaches of general law, organisational policy, or generally recognised principles of ethics, and includes:

- corrupt conduct
- fraud or theft
- official misconduct
- harassment
- unlawful discrimination
- practices endangering the health or safety of staff, volunteers or the general public<sup>1</sup>
- practices endangering the environment.

## WHY YOUR ORGANISATION NEEDS WHISTLEBLOWERS

Research conducted in 2014 by BDO Australia found that tip-offs from whistleblowers were more effective in uncovering fraud within a not-for-profit organisation than any other method, including strong internal controls, internal audits and external audits.

Despite the effectiveness of whistleblowing, only 12% of organisations surveyed for the research report, titled *Not-for-profit Fraud Survey 2014*, said they had a whistleblower policy in place. In contrast, 77% said they had strong internal controls, 65% used internal audits, and 83% used external audits.

## WHY YOUR ORGANISATION NEEDS A WHISTLEBLOWING PROGRAM

Organisations can maximise the benefits of disclosures by whistleblowers by maintaining a whistleblowing program built on robust policies and procedures. These require consistent processes, documentation, training and regular reviews.

This publication demonstrates how your organisation can

establish and maintain such a program. It explores whistleblowing laws, proactive leadership, organisational culture, policies, procedures, reporting pathways, communication and training.

It includes templates for the cornerstones of your whistleblowing program: a policy template (page 20) and a procedures template (page 22). These templates may be used as starting points for developing policies and procedures tailored to your organisation, taking into account its size, available resources, history, culture and specific needs.

A checklist is also included (page 26) to enable you to assess the health of your whistleblowing program.

<sup>1</sup> Complaints regarding occupational health and safety should, where possible, be made through an organisation's occupational health and safety procedures.



# WHISTLEBLOWING: THE PROBLEM

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Whistleblowing is a constructive process to tackle situations in which:

1. There's a problem.
2. It can't be resolved through normal channels.
3. It may rebound on the complainant if they're not protected.

Let's look at these elements in more detail.

There are many kinds of undesirable happenings that may be occurring in your organisation and that you would want brought to the attention of management.

These include:

## THE ILLEGAL

Where a staff member or volunteer is breaching the public law. Possible offences vary in severity, from dumping asbestos in kindergartens to parking across driveways.

## THE UNSAFE

Where a staff member or volunteer is conducting your organisation's business in a manner likely to cause harm to themselves, others or your organisation. Again, there's a wide range of possible harms, from the sprained ankle caused by a loose rug, to the broken neck caused by a snapped ski-lift cable.

## THE UNCONSTITUTIONAL

Where a staff member or volunteer is acting contrary to the organisation's constitution. If proven, this is a breach of contract – private law – and not a matter for the police, but you'll still want it fixed.

## THE AGAINST-THE-RULES

Where a staff member or volunteer is acting contrary to the organisation's written policies or procedures. This is a matter for the HR department or relevant manager.

## THE UNETHICAL

Where a staff member or volunteer is doing something that is not illegal but is still wrong – unfair, or biased, or environmentally unsustainable.

## THE MISTAKEN

And after we have listed all the things that are wrong because they're forbidden, there follows another extensive list of things that are wrong because they're stupid. The board, or the CEO with the board's authority, or a section head with the CEO's authority, may make doomed investments, begin misguided projects, employ the wrong people, or – the list is infinite, and every worker can add a few more of their own.

The thing about this sort of mistake, though, is that the board (etc.) may be quite entitled to make it. They were elected to run the organisation, and they're running it. If the board is genuinely doing its best and wanting to do the right thing but just making a dog's breakfast of it, the only remedy is for the members to vote them out at the next opportunity and bring in a new lot who may do better. It's not for the staff to work against them.

It's not always easy to draw a line between this kind of doing-it-wrong and the kind of wrongdoing that calls for a whistle to be blown, but it's a necessary distinction.

## DEGREES OF WRONGNESS

Not only can different things all be wrong; they can be wrong in different ways and on different scales.

### Serious or trivial

A wrongdoing can be monstrous or trivial. Legal breaches, for example, include everything from embezzlement at one end of the spectrum to erecting a shed without a permit at the other, and a problem can be more or less important, urgent, or imperative.

### Frequent or rare

A wrongdoing might be a one-off error unlikely to arise again, or it might be part of the daily routine.

## WHISTLEBLOWERS: SNITCHES OR BEACONS OF LIGHT?

“The definition of “whistleblower” outside of the United States is itself a subject of debate. In a whistleblower case tried by the Government Accountability Project in Tunisia in the Administrative Tribunal for the African Development Bank, the interpreters halted the proceedings to resolve a dispute over the proper translation of the term ‘whistleblower.’ One of the translators provided me with the definition ‘stool pigeon or snitch.’ The other believed the correct translation was ‘one who shines the light of truth.’ An attitudinal rift exists within Europe as well as to which of these two definitions is more accurate.”

Source: “The Current State of Whistleblower Law in Europe: A Report by the Government Accountability Project” (conference paper), by Thad M. Guyer & Nikolas F. Peterson, 2013.

### Personal or general

In many cases the complainant may be reporting a wrongdoing that happened to them, rather than to someone else – that they’re being bullied, for example. In these cases the complainant should first aim to resolve the problem directly with the person against whom the complaint is made. If this isn’t viable, they should refer to the organisation’s internal complaints resolution system.

### Urgent or optional

If the fête’s ferris wheel has a loose nut, that needs to be fixed right now. If the hand dryer in the staff toilet isn’t working, it’ll probably wait till you can inform your supervisor in due course.

### Blatant or arguable

Some things are flagrantly illegal and that’s obvious to anyone, but it’s not always so clear. Some things are arguable, or have loopholes that a good lawyer can exploit, or might or might not be legal depending on other factors – what the accountants are telling the tax people, for instance.

It’s just not possible to set out in detail the exact criteria for a whistleblowing worthy offence. It’s not always going to be black and white; it may be a judgement call. All these variables add up to a requirement for staff to use their judgement. If necessary, assistance, support or advice should be made available, on a confidential basis, from contact

officers or the like in accordance with your organisation’s procedures.

It’s better to be sure than to run the risk of a problem escalating. You will not be penalised for raising an issue or wrongdoing which you genuinely believe should be reported.

# ORGANISATIONAL CULTURE

Whistleblowing is a sign of a serious failure of the usual processes in your organisation to fix the problems reported.

That doesn't mean it's a bad thing. If you've failed – if some people in your organisation are doing something that's illegal or unethical – you need to know about it so you can set about fixing what's wrong. Much better, though, would be to head it off at the pass by establishing policies and procedures that prevent individuals from going off the rails. Whistleblowing policies aren't a stand-alone solution; they're part of a suite of protections.

Whistleblowing should be a last resort, used when other reporting systems have been exhausted or are not effective.

Ideally, in the first instance, you want your staff to be able to speak up with confidence to their supervisors about issues without fear of retaliation.

As far as possible issues, should be raised at the local level between staff and their immediate supervisor or manager.

For more significant problems (or for small problems that a supervisor is ignoring or covering up), an alternative means is required so people can get around that obstacle and raise matters at a higher level.

Only after all internal means of redress have been tried and found wanting should it be necessary

and tolerable for a staff member to make their concerns public.

The obvious exceptions to this rule are instances of a clear and major breach of public law, or where there is a substantial danger to health or safety. In such cases, any person who knows about the breach or danger has an obligation to inform the relevant authorities immediately. (You would hope that the complainant would also first inform their supervisor or manager, but this is not mandated.)

For everything else, however, there are proper channels.

It's really not possible to consider the domain of whistleblowing separately from your overall management style.

As an employer, you want your staff to show initiative in all parts of their job, this included. You want them to strive for continual improvement, and to pay attention to areas where you or others are falling short. And you want them to make it known to you.

You want staff to raise issues with their supervisors even if they are on the trivial end of the spectrum so processes can be reviewed, but you don't want them obsessing if they're told there's nothing in it.

You want staff to trust management and to believe that in general management wants to do the right thing.

You want your staff to take a long view of the organisation's reputation and to bear in

mind the interests of its wider stakeholders.

You want your staff to act ethically.

You're not going to be able to have all those things, because this is an imperfect world, and so you'll need whistleblowing policies, but don't forget what you're really looking for.

In any case, you want your normal channels of communication to be the first step taken by well meaning whistleblowers, and you want them to be confident they will have your support and protection in speaking up.

A fine balance is required which can only be achieved by continuous monitoring and improvement.

## ORGANISATIONAL CULTURE STARTS AT THE TOP

We've outlined some of the characteristics of a positive organisational culture, and the things you want from your staff. But how do you get these?

The tone is set at the top. It's a cliché for the best of reasons: it's true. Leaders have a fundamental role to play in creating the kind of organisational culture in which your whistleblowing program is robust and well understood but doesn't actually need to be brought into play.

This is not something to be done once and ticked off. It's ongoing.

The success of a whistleblowing program relies on the synergy between tangible tactics (policy, procedures, training and monitoring) and corporate culture (the actions of leaders).

A leader may be defined as anyone at a senior level in the organisation, or anyone in the role of Whistleblower Protection Officer (WPO). This covers board members, CEOs, managers, site managers, regional managers, and any other position of authority.

Let's look at the influence a leader's overt and covert actions have on an organisation's whistleblowing program.

## OVERT ACTIONS

Leaders need to clearly, firmly and openly endorse a "speak up" culture within the organisation.

Starting with the CEO, leaders should demonstrate a clear commitment to organisational integrity through public displays and endorsements such as:

- having the board request disclosure statistics for consideration and actioning at board or committee level
- taking whistleblower anonymity and protections seriously by providing a safe environment for reporting
- reminding and encouraging employees, "When in doubt, speak up".

## COVERT ACTIONS

It's not uncommon for people in positions of power to exhibit discrepancies between their overt and covert actions. To "walk the talk", and to be seen to do so,

leaders must ensure their covert and overt actions align.

Covert actions are the things that don't make it into the procedures manual. These include the manner in which things are done – the tone of things. Covert actions can express positive values such as fairness, empathy and respect, or they can go over to the dark side and express unacceptable behaviour such as manipulation, deception, discrimination and unethical decision-making.

This type of behaviour is often shrugged off: "That's how things are done around here." Thus it is self-perpetuating.

Covert actions can create actual or perceived reporting barriers.

Leaders can and should assess the impact of their actions through constructive feedback from the board, or their peers, or via ongoing anonymous employee surveys.

## CULTURE IS EVERYTHING

By ensuring their covert and overt actions are well aligned, leaders can focus on maintaining a positive organisational culture.

A positive culture will instil a sense of responsibility for risk mitigation among stakeholders. Such a culture accepts that mistakes will happen and issues may need to be addressed, and ensures that this doesn't happen at the cost of transparency and trust.

Disclosures brought to an organisation's attention are an opportunity to instil trust and confidence throughout the organisation.

The organisation should focus on maintaining a constructive

approach and trusted reputation in its dealings with whistleblowers. (Responsibility for the on-the-ground work involved may fall principally to the Whistleblower Protection Officer.)

Adhering to policies and procedures, protecting a whistleblower's identity, minimising the risk of retaliation or victimisation, and promoting the power of speaking up – all these reflect and help to cement a positive organisational culture.

An organisation loses credibility if it deters employees from speaking up for fear of the consequences, fails to acknowledge the whistleblower's true worth, or fails to act on reported misconduct.

By ignoring whistleblower reports an organisation exposes itself to the risk of litigation, financial and reputational damage, and loss of employees, goodwill, and good standing in the community.

While the consequences may vary, one thing is certain – if you ignore a whistleblower, the issues will not go away. They will escalate.

Ask yourself whether your organisation can say with confidence, "Our people know they will be protected if they speak up. They know we value anyone reporting misconduct."

# THE WHISTLEBLOWER'S EXPERIENCE

Some kinds of wrongdoing, and some wrongdoers, are more difficult to report safely than others. A wrongdoing may be committed by anyone, including a supervisor, manager or CEO. Reporting your superior requires courage even if they're known to be fair and reasonable. If they're known to be thin-skinned, grudgeholders or capable of hitting back it's more difficult again – which may understandably prompt whistleblowers to go outside normal channels unless they are assured of support and protection.

## Protecting whistleblowers from retaliation

Your whistleblower framework must be able to protect genuine whistleblowers from retaliation. That's a lot more difficult than it sounds. Retaliation can take many forms.

Whistleblowers can be punished by:

- being rebuked
- being given less desirable work, hours or facilities
- being dismissed, being made redundant, or not having temporary work renewed
- not being considered for promotions, other positions or other duties.

The trouble is, of course, that it is very difficult indeed to separate legitimate reasons for these decisions from retaliation.

There are always going to be difficult judgements to be made as to whether a particular management decision is fair and reasonable or retaliation. Hence, it is essential to allow these decisions to be reviewed by an independent person when a whistleblower who feels aggrieved requests this.

## Anonymity for whistleblowers

Protecting someone from retaliation is a lot easier if their identity can be concealed from the person they have informed against.

If an investigation can proceed simply on the basis of objective evidence – if, say, the allegation is that the person has been charging the cost of callgirls to their union credit card, and this can be proved simply by credit card records – the identity of the whistleblower does not have to be disclosed.

Not all wrongdoing or misconduct, however, allows the identity of the complainant to be concealed. If someone has been accused of bullying or sexual harassment, for example, the evidence is usually based on personal allegations – one person's story, or several people's stories, against another's.

It is not possible in such a case to address the complaint without disclosing the identity of the complainant.

There will be cases, too, where simply informing the accused of the circumstances of the accusation will be sufficient to clue them in on who has informed on them.

Each case should be looked at on its merits and the competing or conflicting interests of the parties assessed and dealt with. Clearly, legal advice should be obtained in difficult cases.

Further considerations apply where serious breaches of the law are alleged. You may be legally obliged to report the breaches to the relevant authorities, such as the police, and you may be obliged to cooperate with them. Your legal obligations may not permit you to shield the whistleblower, and they should be informed accordingly.

You may offer not to disclose the identity of a whistleblower unless:

- They consent to the disclosure
- The disclosure is required by law
- The disclosure is necessary to prevent a serious threat to a person's health or safety.

You may, however, offer to protect them from retaliation.

## The ideal whistleblower – and the one who falls short

The most effective whistleblowers are bona fide, independent, disinterested, tactful, and reasonable. If they are all these things, you need have no reservations in bringing your procedures into play.

Some whistleblowers, however, will be wrong, in whole or in part. They may point to the wrong person, the wrong problem or the wrong occasion. Some will report smoke in the absence of fire. Some will see smoke and scream 'Fire!' in a crowded theatre. Several factors come into play.

## Motive

They may want to harm the person fingered, rather than stop the wrongdoing. They may not be acting in good faith. An accusation like this is particularly difficult to prove, though, and bias should be assumed only in the most clear-cut of cases.

## Prejudice

They may have leaped to the wrong conclusion without any real basis or genuine belief in the wrongdoing. They may have decided that the person is guilty of something based on their prejudices. They may seize on something remotely suspicious and dismiss exculpatory factors. What they allege may simply be untrue or impossible. You shouldn't treat a disclosure as factual unless there's some valid evidence. Unless and until the allegation is proven, the person accused is entitled to a presumption of innocence and to be treated accordingly.

## Retaliation versus discipline

Remember, all parties – the whistleblower, the person accused, and witnesses in the investigation – are legally entitled at all times to protection from reprisals or retaliation.

There is a difference between retaliation and discipline. If a whistleblower has knowingly made a false or malicious disclosure, they may be disciplined. That discipline might consist of anything from a warning to termination of employment, according to what is proven, and should be carried out in accordance with your policies and procedures and the law.

As an employer, you are legally obliged to ensure they are protected from retaliation or victimisation.

# WHAT THE LAW SAYS

Australian whistleblowing laws have been described as a tapestry, lacking consistency and uniformity, often leaving the plight of whistleblowers to chance.

Legislators acknowledge the need for a major overhaul of current laws and are currently working towards a national approach.

The protection provided by the law is currently both fragmented and limited.

- The Commonwealth *Public Interest Disclosure Act 2013* protects whistleblowers from legal liability when making disclosures about wrongdoing in the federal public sector.
- The various states have similar laws covering disclosures in the public sector (see below) – and in Victoria, at least, the public sector includes NFPs contracted to “perform a public function”.
- In the private sector (which for present purposes includes not-for-profit companies and incorporated bodies),

the *Corporations Act 2001* protects company officers, employees and defined others when making disclosures “in good faith” and “on reasonable grounds” (and, broadly, within channels) in relation to breaches of the *Corporations Act 2001* (so, probably not much help).

- OHS/WHS state laws outlaw retaliatory action against workers who raise OHS issues.
- The *Fair Work Act 2009* offers protection to employees who exercise a “workplace right” from adverse action by employers – but be warned that it’s not at all clear whether you can complain under this section about a wrong that’s being suffered by someone else, which is pretty much the definition of whistleblowing.

As well as statute law, the law of civil wrongs (torts) may also apply. As employers, organisations are vicariously liable for injury or loss suffered by an employee in the course of employment.

This includes injury or loss to a whistleblower resulting from unmerited reprisals.

To protect against vicarious liability for reprisals, organisations must show they have taken “reasonable precautions” against victimisation. They should acknowledge that the risk of retaliation is real, and they should provide a simple and effective protection process for whistleblowers.

The Australian Standard AS 8004–2003, “Whistleblower Protection Programs for Entities”, applies to the private sector and offers a guide to the key requirements of a whistleblowing framework. The standard provides guidance on confidentiality, anonymity and protection<sup>2</sup>.

While regulators and courts have begun taking a more aggressive approach with employers who retaliate against (or even fail to protect) whistleblowers, legal redress for whistleblowers remains prohibitively costly and time-consuming.

<sup>2</sup> Australian Standards are available for purchase online from <https://infostore.saiglobal.com/>.

Whistleblowers shouldn't have to weigh up the risks of taking action. Protection shouldn't be confined to whistleblowers, either, but should be provided to everyone involved. Witnesses, for example, may need protection too.

## RELEVANT LEGISLATION

Australia – [Public Interest Disclosure Act 2013](#); [Corporations Act 2001](#)

Australian Capital Territory – [Public Interest Disclosure Act 2012](#)

New South Wales – [Public Interest Disclosures Act 1994](#)

Northern Territory – [Public Interest Disclosure Act 2008](#)

Queensland – [Public Interest Disclosure Act 2010](#)

South Australia – [Whistleblowers Protection Act 1993](#)

Tasmania – [Public Interest Disclosures Act 2002](#)

Victoria – [Protected Disclosure Act 2012](#)

Western Australia – [Public Interest Disclosure Act 2003](#)

# PROCEDURES

## HANDLING DISCLOSURES

Both internal and external reporting pathways should be available to whistleblowers.

### Internal reporting

Internal methods of reporting include standard grievance procedures (e.g. raising concerns with a manager) and access to the Whistleblower Protection Officer via email or phone or in person.

### External reporting

Some organisations choose to contract an external provider of whistleblower reporting services. This provides potential whistleblowers with another avenue through which to take their concerns, particularly if they don't feel comfortable using internal methods, or prefer to remain anonymous. The role of the external service provider is to objectively and independently receive disclosures, protect the person's anonymity, and immediately escalate their disclosure to the WPO of the organisation concerned, or to the appropriate manager. The service also provides a mechanism for ongoing anonymous communication between the organisation and the whistleblower. Whistleblower reporting services typically offer a 24-hour telephone hotline, and email and online options. They charge a fee for their services.

## HANDLING INVESTIGATIONS

You need to take a whistleblower's revelations seriously, and that's where the Whistleblower Protection Officer's (WPO's) work really begins.

The WPO should be trained in handling a diverse range of scenarios, investigative techniques, communication processes and protection protocols.

If it's a police matter, the WPO is out of the picture, at least initially. If it's not, the allegations have to be investigated. The investigation has to observe the rules of procedural fairness (or natural justice – much the same thing). In outline, this means you must:

- inform the person being investigated of the accusations made against them
- allow them to put their case
- hear the case without bias
- act only on evidence.

You can't condemn somebody based on suspicion – but if there's a safety aspect to the matter you may have to suspend them while it is under investigation, which can look rather like condemnation. You may have to take legal advice.

If there's a public relations aspect to the matter, get your executive together to decide how you want to handle it (and how you'll handle it if things don't go the way you want them to.

In summary, your procedures should outline the way allegations of misconduct are to be investigated, and you should do it by the book:

- You shouldn't jump to conclusions, or take any actions until an allegation is proven.
- You should document all disclosures and investigations.
- All documents should be securely stored, and confidentially retained.

Appendix 2 (page 22) provides a step-by-step account of procedures typically followed in the investigation of a whistleblower report.

## PROTECTION AND SUPPORT

An organisation should establish a strategy for supporting and protecting staff who raise concerns via the whistleblowing program. The strategy should cover, but is not limited to, procedures for assessing risks upon receiving a report, methods for reporting victimisation, processes for handling victimisation complaints, and methods of support.

Support should be available to stakeholders before, during and after the whistleblowing process. This may involve access to an internal support person and external counselling.

# COMMUNICATION AND TRAINING

Once an organisation has established a whistleblowing program, getting people engaged across the organisation is crucial to its success.

Approaches to education, training and communication vary greatly from one organisation to the next. An organisation's size, sector, geographical location, history, stakeholder demographics and more will all affect how education and training are best provided.

To plan and develop a successful strategy:

- assess the suitability of current formal and informal mediums for communication and training
- break up the communication and training components into "implementation" and "ongoing" categories
- review the communication and training requirements for different levels of the organisation

- investigate resource requirements (you might wish to contract training from an external provider of whistleblower services)
- set a timeline for implementation and review
- establish means to measure the success of the training, education and communication.

Useful communication and training tactics may include:

- disseminating an official leadership statement
- induction kits for new employees
- office posters
- internal communications
- online training
- in-person training
- case study and scenario training
- non-employee stakeholder training.

**ONCE AN ORGANISATION HAS ESTABLISHED A WHISTLEBLOWING PROGRAM, GETTING PEOPLE ENGAGED ACROSS THE ORGANISATION IS CRUCIAL TO ITS SUCCESS.**





## APPENDIX 1:

# WHISTLEBLOWER POLICY TEMPLATE

## WHISTLEBLOWER POLICY

Policy number	[insert number]	Version	[insert number]
Drafted by	[insert name]	Approved by board on	[insert date]
Responsible person	[insert name]	Scheduled review date	[insert date]

*Please note that this is a template policy for guidance only. For assistance in tailoring this policy to suit your organisation, or **for legal advice at a pre-agreed price** or training in this area, please do not hesitate to contact legal firm Moores to discuss how we can meet your needs. Please call the NFP-Assist Legal Hotline on (03) 9843 0418 or email [NFPAssist@moores.com.au](mailto:NFPAssist@moores.com.au).*

## INTRODUCTION

The board of [name of organisation] is committed to 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 non-compliant actions by other people. Correspondingly, employees who do assist in maintaining legal, proper, and ethical operations should not be penalised in any way.

## PURPOSE

The purpose of this policy is to:

- encourage the reporting of matters that may cause harm to individuals or financial or non-financial loss to [name of organisation] or damage to its reputation;
- enable [name of organisation] to deal with reports from whistleblowers in a way that will protect the identity of the whistleblower as far

as possible and provide for the secure storage of the information provided;

- establish policies for protecting whistleblowers against reprisal by any person internal or external to the entity;
- provide for the appropriate infrastructure;
- help to ensure [name of organisation] maintains the highest standards of ethical behaviour and integrity.

## POLICY

### Concerns regarding illegal or corrupt behaviour

Where an employee of [name of organisation] believes in good faith on reasonable grounds that any other employee, volunteer, or contractor has breached any provision of the general law, 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 (WPO); or, if they feel this to be necessary,
- a person or office independent of the organisation nominated by the organisation to receive such information, or
- the duly constituted authorities responsible for the enforcement of the law in the relevant area.

The person making their concern known shall not suffer any sanctions from the organisation on account of their actions in this regard provided that their actions

- are in good faith, and
- are based on reasonable grounds, and
- conform to the designated procedures.

Any person within the organisation to whom such a disclosure is made shall

- if they believe the behaviour 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 behaviour 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.

Any such investigation shall observe the rules of natural justice and the provisions of procedural fairness.

Disclosures may be made anonymously, and this anonymity shall as far as possible be preserved by the organisation.

## Concerns regarding improper or unethical behaviour

Where an employee of [name of organisation] believes in good faith on reasonable grounds that any other employee, volunteer, or contractor has breached any provision of the

organisation's constitution, or its bylaws, or its policies, or its code of conduct, or generally recognised principles of ethics, that employee may 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,
- a person or office independent of the organisation nominated by the organisation to receive such information. [Organisation name to be inserted here.]

The person making their concern known shall not suffer any sanctions from the organisation on account of their actions in this regard provided that their actions

- are in good faith, and
- are based on reasonable grounds, and
- conform to the designated procedures.

Any person within the organisation to whom such a disclosure is made shall

- if they believe the behaviour 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 behaviour 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.

Any such investigation shall observe the rules of natural justice and the provisions of procedural fairness.

Disclosures may be made anonymously, and this anonymity shall as far as possible be preserved by the organisation.

## AUTHORISATION

[Signature of Board Secretary]  
[Date of approval by the Board]  
[Name of organisation]

## APPENDIX 2:

# WHISTLEBLOWER PROCEDURES TEMPLATE

## WHISTLEBLOWER PROCEDURES

Procedures number	[insert number]	Version	[insert number]
Drafted by	[insert name]	Approved by CEO on	[insert date]
Responsible person	[insert name]	Scheduled review date	[insert date]

### RESPONSIBILITIES

The organisation's board is responsible for adopting the whistleblower policy, and for nominating the organisation's Whistleblower Protection Officer (WPO).

The Whistleblower Protection Officer is responsible for:

- coordinating an investigation into any report received from a whistleblower, and
- documenting and handling all matters in relation to the report and investigation, and
- finalising all investigations.

The organisation's CEO is responsible for the implementation of the whistleblower policy.

All staff and all volunteers are responsible for reporting breaches of general law, organisational policy, or generally recognised principles of ethics to a person authorised to take action on such breaches.

### DEFINITIONS

A whistleblower is a person (being a director, manager, employee or contractor of, or volunteer for, [name of organisation]) who, whether anonymously or not, makes, attempts to make or wishes to make a report in connection with reportable conduct and wishes to avail themselves of protection against reprisal for having made the report.

Breaches of general law, organisational policy, or generally recognised principles of ethics include:

- corrupt conduct
- fraud or theft
- official misconduct
- maladministration
- harassment or unlawful discrimination
- serious and substantial waste of public resources
- practices endangering the health or safety of staff, volunteers, or the general public
- practices endangering the environment.

Complaints regarding occupational health and safety should where possible be made through the organisation's occupational health and safety procedures.

## PROCESSES

### External reporting entities

The board 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 should be informed by any appropriate method.

### Reporting

Where an employee of [name of organisation] believes in good faith on reasonable grounds that any other employee, volunteer, or contractor has breached general law, organisational policy, or generally recognised principles of ethics, and wishes to report their concern, 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
- a person or office independent of the organisation nominated by the organisation to receive such information, that person or office being [insert organisation name here, if relevant]; or (where a breach of general law is alleged)

- the duly constituted legal authorities responsible for the enforcement of the law in the relevant area.

These procedures do not authorise any employee to inform commercial media or social media of their concern, and do not offer protection to any employee who does so, unless

- it is not feasible for employees to report internally, or
- existing reporting channels have failed to deal with issues effectively.

Any person reporting such a breach should be informed that

- as far as lies in the organisation's power, the employee will not be disadvantaged for the act of making such a report; and
- if the complainant wishes to make their complaint anonymously, their wish shall be honoured except insofar as it may be overridden by due process of law; however,
- 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.

Any such report should where possible be in writing and should contain, as appropriate, details of

- the nature of the alleged breach;
- the person or persons responsible for the breach;
- the facts on which the complainant's belief that a breach has occurred, and has been committed by the person named, are founded;

- the nature and whereabouts of any further evidence that would substantiate the complainant's allegations, if known.

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 the organisation's investigative procedures. The existence of such a concern is sufficient to trigger reporting responsibilities.

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.

## Anonymity

If the complainant wishes to make their complaint anonymously, their wish shall be honoured except insofar as it may be overridden by due process of law.

The complainant should, however, be informed that the maintenance of such anonymity may make it less likely that the alleged breach can be substantiated in any subsequent investigation.

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.

## Investigation

On receiving a report of a breach, the person to whom the disclosure is made shall

- if they believe the behaviour 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 behaviour complained of to be neither trivial nor fanciful, put in motion the investigation process described below.

The person to whom the disclosure was made shall notify the CEO, who shall be responsible for ensuring that an investigation of the charges is established and adequately resourced.

Terms of reference for the investigation will be drawn up, in consultation with the CEO, to clarify the key issues to be investigated.

An investigation plan will be developed to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the allegation(s) and sufficient resources are allocated.

Strict security will be maintained during the investigative process.

All information obtained will be properly secured to prevent unauthorised access.

All relevant witnesses will be interviewed and documents examined.

Contemporaneous notes of all discussions, phone calls and interviews will be made.

Where possible, interviews will be taped.

The principles of procedural fairness (natural justice) will be observed<sup>3</sup>. 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.

The person or persons conducting the investigation shall be as far as possible unbiased.

## Findings

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.

## Information to informant

Subject to considerations of the privacy of those against whom the allegations are made and customary practices of confidentiality, the whistleblower will be kept informed of:

- relevant progress of an investigation
- relevant outcomes of an investigation.

## Protection of informant

Where the investigation has found that the person making the allegation acted in good faith on reasonable grounds, the CEO shall designate an officer to be responsible for ensuring that the person suffers no employment-related disadvantage on account of their actions in this matter and to provide additional support for the person where necessary.

## Related documents

- Disputes Resolution Policy
- Confidentiality Policy

## Authorisation

[Signature of CEO]  
[Name of CEO]  
[Date]

<sup>3</sup> Natural justice and procedural fairness do not require that the person affected be informed of the identity of the person making the initial disclosure, unless that communication constitutes part of the evidence relied upon in making the eventual finding.

## APPENDIX 3:

# WHISTLEBLOWING PROGRAM CHECKLIST

### COMMITMENT FROM MANAGEMENT

- Is there a clear statement from the highest level of your organisation's commitment to enabling reporting of wrongdoing, and taking follow-up action?
- Is there a written commitment to maintaining a workplace free of unacceptable behaviour and misconduct?
- Is there a written Code of Conduct?
- Is there a written commitment to investigating and addressing reported wrongdoing?

### ONGOING REVIEW AND EVALUATION

- Have you reviewed your whistleblowing policy and procedures in the last two years?
- Have you evaluated your policies for effectiveness?
- Are changes in the law and governance requirements reflected in your policy and procedure? How have the changes been made and communicated?

### POLICY ESTABLISHED IN CONSULTATION

- Is the policy a corroborative effort by managers and employees?
- What framework is in place to enable reporting of illegal, inappropriate or unethical conduct?
- Many policies are introduced in reaction to legal or corporate governance requirements. Have employees been advised as to why the policy was introduced? Have employees been consulted?

### INFORMATION AND TRAINING

- Have employees, including new ones, been given sufficient information and training about the reporting of wrongdoing? Have employees been given a copy of the policy and procedures?
- Do you have an ongoing awareness and promotion program? How are employees advised of changes? Are employees given "wallet" cards providing a summary of how they can make a report?

### CLEARLY STEPPED OUT PROCESSES

- Does the policy detail the steps that will be taken when a report is made?

### MULTIPLE REPORTING TIMES AND MEANS

- Is an employee able to make a report 24 hours a day, 365 days a year? Most whistleblowing occurs out of hours when the whistleblower feels most comfortable and safe.

### ANONYMITY AND CONFIDENTIALITY

- Can a whistleblower report information confidentially and anonymously? Whistleblowers will be reluctant to speak up if they fear that their information may not be kept confidential or their identity become known.
- Does a whistleblower have the option to report to an external, independent and impartial third party? Despite an organisation's best efforts, some employees won't speak up internally for fear of reprisals or retribution.

## SKILLS, EXPERIENCE AND QUALIFICATIONS OF EXTERNAL SERVICE PROVIDERS

- Is the person or organisation to whom an external report can be made appropriately trained and accredited?

## PROTECTION AND SUPPORT AGAINST RETALIATION

- Does your policy spell out the protection offered to a whistleblower against victimisation?
- Have you created the position of Whistleblower Protection Officer?
- Does your policy spell out the assistance available to a person accused of wrongdoing? Everyone is entitled to a presumption of innocence. People accused often suffer stress and emotional reactions. They need to know where they can find assistance and how to get it. An employer has an obligation to all parties including the person accused.

## CONSEQUENCES OF WRONGDOING SPELT OUT

- Are the consequences for wrongdoing, breaching the policy or making a false disclosure set out? An outcome may be invalidated if the parties don't know at the outset the consequences they face for breaching a policy.

## KEY ROLES AND RESPONSIBILITIES

- Does your policy define the roles and responsibilities of key persons in the whistleblowing program? Each step in the process from receiving the information to finishing an investigation and deciding the action to take to conclude a matter may need to be taken by a different person to ensure independence and impartiality.

## REPORTABLE WRONGDOING DEFINED

- Does your policy outline the type of conduct or behaviour that should be reported as well as what should not be reported pursuant to the policy? Not all inappropriate behaviour is illegal. Not all unacceptable conduct requires formal reporting via the whistleblowing procedures. The reportable conduct should be readily identifiable.

# ABOUT OUR COMMUNITY



**ourcommunity.com.au**  
Where not-for-profits go for help



The Our Community group provides advice, connections, training and easy-to-use tech tools for people and organisations working to build stronger communities.

Our partners in that work are not-for-profit organisations and social enterprises; government, philanthropic and corporate grantmakers; donors and volunteers; enlightened businesses; and other community builders.

Our Community is a Certified B Corporation and multi-award-winning social enterprise. Our offerings include:

- **[OurCommunity.com.au](#)** – Australia’s centre for excellence for the nation’s 600,000 not-for-profits and schools: where not-for-profits go for help
- **[Institute of Community Directors Australia](#)** – the best-practice governance network for the members of Australian not-for-profit boards, committees and councils, and the senior staff who work alongside them
- **[FundingCentre.com.au](#)** – the best place to go to get information on grants and fundraising in Australia
- **[GiveNow.com.au](#)** – commission-free online donations for not-for-profits, and philanthropy education and tools for businesses, families and individuals
- **[GoodJobs.com.au](#)** – Connecting good people with social sector jobs, board vacancies and internships
- **[CommunitiesInControl.com.au](#)** – Australia’s most inspiring annual community sector gathering: thought leadership for the not-for-profit sector
- **[Australian Institute of Grants Management](#)** – information, inspiration and education for government, philanthropic and corporate grantmakers
- **[SmartyGrants](#)** – software and data science for revolutionary grantmakers
- **[Australian Institute for Corporate Responsibility](#)** – creating and facilitating authentic connections between enlightened businesses and their communities
- **[The Innovation Lab](#)** – the engine room for sharing ideas to drive social change

# ABOUT YOUR CALL

**yourcall**

whistleblowing solutions



Your Call is a best-practice provider of external hotline and online reporting services to organisations in Australia and New Zealand.

We exist to help organisations develop a speak-up culture and achieve high standards of corporate governance and business conduct.

Your Call's role is to protect and encourage employees when speaking up to ensure the organisation acts ethically and responsibly in relation to whistleblowing.

Your Call's service is built from the Australian Standard AS 8004\_2003, Whistleblower Protection Programs for Entities.

Your Call services include:

- 24/7 confidential hotline and online reporting services
- Email, fax and mail reporting services
- Case management system
- Consulting

We listen, we respect and we protect.

Get in touch with our experts at [info@yourcall.com.au](mailto:info@yourcall.com.au) or 1300 788 712, or visit [yourcall.com.au](http://yourcall.com.au).

# NOTES



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## THE LAST WORD:



It all becomes easier once senior management understands how crucial whistleblowing is to good risk management – it's often the earliest and best warning system on problem areas in the organisation.

**Professor A J Brown**  
Centre for Governance  
and Public Policy,  
Griffith University, 2016

