

Whistleblower Policy

NQS

QA7	7.1.2	Management systems - Systems are in place to manage risk and enable the effective management and operation of a quality service.
-----	-------	--

National Regulations

Regs	168	Policies and procedures are required in relation to governance and management of the service
------	-----	--

Aim

To help deter wrongdoing, and ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported.

Related Policies

Governance Policy

Implementation

Actions which are inconsistent with our policies, procedures and values can harm the long-term sustainability of our business as well as our reputation. We encourage eligible whistleblowers to report instances of wrongdoing in line with the procedures outlined in this Policy, and take our obligations to protect those making disclosures very seriously. To ensure all staff and managers are aware of the Policy, Nominated Supervisors will include it in our induction procedures for all new staff and in our Staff Handbook.

Note this Policy is based on the Whistleblower provisions in the Corporations Act 2001. There are also similar whistleblower provisions and protections available in relation to tax avoidance and other tax issues under the Taxation Administration Act 1953. We have summarised these in Attachment A.

Qualifying for Protection

Disclosures made by 'eligible whistleblowers' about 'disclosable matters' are protected if the whistleblower makes:

- the disclosure directly to an 'eligible recipient'
- the disclosure to a legal practitioner to obtain legal advice or legal representation about the operation of the whistleblower provisions (even if advised there is no disclosable matter)
- an 'emergency disclosure' or 'public interest disclosure.'

Whistleblowers may still be protected even if the disclosure turns out to be incorrect.

Eligible whistleblowers

An eligible whistleblower is:

- an officer (eg company director, secretary or person who makes, or contributes to significant business decision) or employee (eg current and former employees who are permanent, part-time, fixed-term or temporary, trainees, managers, and directors)
- a supplier of services or goods (paid or unpaid) including their employees (eg current and former contractors, consultants, service providers and business partners)
- a company associate
- a relative, dependant or spouse of current and former employees, contractors, consultants, service providers, suppliers and business partners.

Disclosable matters

Only disclosable matters are protected under the Corporations Act. Disclosable matters involve information that a person can reasonably suspect concerns misconduct or an improper state of affairs. Misconduct includes fraud, negligence, default, breach of trust and breach of duty. There does not need to be unlawful conduct. There could instead be a systemic issue that the relevant regulator should know about to properly perform its functions. Disclosable matters also involve information a person reasonably suspects:

- is an offence or contravention of the Corporations Act 2001, the Australian Securities and Investments Commission Act 2001, the Banking Act 1959, the Financial Sector (Collection of Data) Act 2001, the Insurance Act 1973, the National Consumer Credit Protection Act 2009
- is an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more
- represents a danger to the public or the financial system (even if there is no unlawful conduct)
- is prescribed by regulation.

Examples include:

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property
- money laundering or misappropriation of funds
- offering or accepting a bribe

- financial irregularities
- failure to comply with, or breach of, legal or regulatory requirements
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or planning to make a disclosure.

Disclosable matters do not include personal work-related grievances like those listed below and these should be actioned following our Complaints/Grievance Policy and procedures:

- interpersonal conflicts between employees
- decisions that do not involve a breach of workplace laws
- decisions about the engagement, transfer or promotion of employees
- decisions about the terms and conditions of employment
- a decision to suspend or terminate employment, or implement performance improvement plan

However, a personal work-related grievance may still be protected if it includes information that includes a disclosable matter or the person seeks legal advice/representation about the whistleblower protections.

Public interest and emergency disclosures

There can be a 'public interest disclosure' to a journalist or parliamentarian if a whistleblower reasonably believes no action is being or has been taken in relation to a previous disclosure to ASIC (or another prescribed Commonwealth body), it's been at least 90 days since that disclosure, and they reasonably believe making a further disclosure is in the public interest.

There can be an 'emergency disclosure' to a journalist or parliamentarian if a whistleblower has previously disclosed information to ASIC or another prescribed Commonwealth body, and they reasonably believe the information concerns a substantial and imminent danger to the health or safety of one or more persons or the natural environment.

Whistleblowers must first notify in writing the organisation they initially disclosed to and advise they intend to make a public interest or emergency disclosure. In the latter case they must not disclose more information than necessary about the danger. We encourage whistleblowers to obtain independent legal advice before making a public interest or emergency disclosure to ensure relevant legal protections can be applied.

Eligible recipients

People who can receive disclosures include:

- a director, secretary or senior manager/executive of the business
- an internal or external auditor or actuary of the business

- ASIC or another Commonwealth body prescribed by regulation. (These organisations have information available online about the disclosure process. See for example ASIC Information Sheet 239 'How ASIC handles whistleblower reports')
- journalists and parliamentarians in the case of public interest and emergency disclosures.

Whistleblower protections

Legal protections include:

- Identity protection (confidentiality)** – It's illegal for anyone to disclose the identity of a whistleblower, or information that's likely to lead to their identification, unless it's reasonably necessary for investigating the issues raised, the whistleblower has consented, or their identity is disclosed to ASIC, the Federal Police, or a legal practitioner to obtain legal advice or representation about the whistleblower provisions. Whistleblowers can lodge a complaint with regulators like ASIC or the ATO if their confidentiality is breached
- Protection from detrimental acts or omissions** – It's illegal for a person to engage in threaten to or engage in conduct that causes a whistleblower or potential whistleblower detriment. Detriment includes dismissal, adverse changes in their position or duties, discrimination, harassment, intimidation, harm or injury including psychological harm, or damage to a person's property, reputation, business or financial position. Detriment does not include processes like managing a whistleblower's unsatisfactory work performance or moving them to a different area to prevent detriment
- Compensation and other remedies** – A whistleblower can seek compensation and other remedies through the courts if they suffer loss, damage or injury because of the disclosure and the business failed to take reasonable precautions or exercise due diligence to prevent this. Whistleblowers may wish to seek independent legal advice and/or contact ASIC or the ATO
- Civil, criminal and administrative liability protection** – Whistleblowers are protected from civil liability (eg legal action for breach of employment contract, duty of confidentiality etc), criminal liability (eg prosecution for unlawfully releasing information) and administrative liability (eg disciplinary action for making disclosure) unless disclosure reveals misconduct on their part.

How to make a disclosure

We recognise the importance of ensuring disclosures can be made anonymously and/or confidentially, securely and outside business hours.

You can also lodge a report with ASIC through their online misconduct reporting form.

Whistleblowers are still protected if they choose to remain anonymous, including during and after an investigation. They may refuse to answer any questions they feel could reveal their identity. It's important, however, that we can contact an anonymous whistleblower to ensure an investigation can proceed and we can obtain further information if needed or provide feedback.

Handling and investigating a disclosure

The person receiving the disclosure will determine whether it qualifies for protection and if an investigation is required. They will focus on the information disclosed, not the whistleblower's motive for reporting, and consider whether the disclosure indicates a systemic issue within the business.

If an investigation is required the person receiving the disclosure will determine the scope of the investigation, who will lead it, if any technical, financial or legal advice is required and the timeframe for the investigation. All investigations will be conducted in an objective and fair way, and will not involve the whistleblower or any people or business areas involved in the disclosure. The person receiving the disclosure and the investigator(s) will implement the following measures to support and protect whistleblowers:

a) Identity protection (confidentiality)

To reduce the risk that the whistleblower will be identified they will:

- obscure all personal information/references to the whistleblower including name and title
- refer to the whistleblower in a gender-neutral way
- ask the whistleblower if any of the information could identify them
- ensure only a very small number of people directly involved in the investigation know the whistleblower's identity (if they consent) or information which could identify them
- securely store all paper and electronic disclosure documents and materials
- limit access to all information to those directly involved in the investigation
- only send communications and documents to an email address or a printer that cannot be accessed by other staff.

Note it may be impossible to protect identity if the whistleblower has told others about their intentions, or they're one of a handful of people with access to the information, or they received information privately and in confidence.

b) Protection from detrimental acts or omissions

To protect whistleblowers from detriment they will:

- assess risk of detriment as soon as possible after receiving disclosure, and implement actions if required to protect the whistleblower eg transfer to another location, transfer to another role at same level, change way role is performed, reassign or relocate other staff involved
- provide advice about available support services eg counselling, professional or legal services
- provide advice about strategies to help manage stress, time or performance impacts
- provide advice about how to lodge a complaint if detriment has already occurred and what actions the business may take

- Where detriment has already occurred, the person receiving the disclosure will implement measures to protect the whistleblower. These may include taking disciplinary action against those who have caused the detriment, allowing the whistleblower to take extended leave, offering new training and career opportunities, and offering compensation or other remedies.

The person receiving the disclosure and the investigator(s) will also ensure people who may be mentioned in the disclosure are treated fairly and the investigation is fair and independent. As far as possible, the investigation will be handled confidentially, implementing measures such as those discussed above. The investigator(s) will determine when to tell a person named in a disclosure about the investigation. Telling a person too early may lead to the loss of vital information or evidence, or otherwise compromise the investigation. However, a person will be informed before any adverse outcomes are taken against them.

Documenting, reporting and communicating investigation findings

We take any disclosure very seriously, and will regularly inform a whistleblower about the progress of the investigation (including through anonymous channels where required) and its outcome (unless it would be inappropriate to report the outcome). The frequency of the updates will be agreed with the whistleblower at the start of the investigation.

The method for documenting and reporting findings will depend on the nature of the disclosure. However, the outcome of the investigation will be provided to the Nominated Supervisor in a secure format which preserves the confidentiality of the discloser for consideration and further action.

If a discloser is unhappy with the outcome of the investigation we will implement a review process to ensure our policy, processes and procedures were correctly followed. We will also advise the discloser they may lodge a complaint with a regulator like ASIC or the ATO.

Source

'Tax Whistleblowers' ATO <https://www.ato.gov.au>
Corporations Act 2001
Education and Care Services National Law and Regulations
National Quality Standard
Regulatory Guide 270: Whistleblower Policies ASIC Nov 2019
Taxation Administration Act 1953

Review



The policy will be reviewed annually by Management, Employees, Families and Interested Parties
Last reviewed: 1st May 2021 Date for next review: 1st May 2022



Attachment A

Tax Whistleblowers

Qualifying for protection – Eligible Whistleblowers

To qualify for protection as a tax whistleblower you must:

- be or have been in a specific relationship with the business you're reporting about eg an employee, former employee, dependant, spouse
- report the business to the ATO or to an eligible recipient who can take appropriate action – this includes someone appointed by the business eg an internal auditor
- believe the information will help the ATO or recipient perform their duties under taxation law.

If you don't qualify for protection as a tax whistleblower, you can still make a 'tax tip-off.' In either case the ATO will make every effort not to disclose any information which would identify you. You may also choose to report anonymously.

Eligible Disclosures

This law protects eligible tax whistleblowers who make a disclosure:

- to the ATO if they think the information may help the ATO perform its duties under a taxation law in relation to the business which is the subject of disclosure
- to an eligible recipient if they
 - reasonably suspect the information they intend to provide indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the business
 - believe the information may help the eligible recipient perform their duties under a taxation law in relation to the business which is the subject of disclosure.

Eligible recipients

Eligible recipients are generally internal to the business which is the subject of disclosure, or have a relationship with the business eg a registered tax or BAS agent who provides services to the business.

How tax whistleblowers are protected

a) Identity protection **It's illegal for someone to disclose the identity of whistleblowers, or information that's likely to lead to their identification. However, whistleblowers may consent to sharing their identity. If their identity needs to be disclosed to an authorised body like the ATO or an auditor to assist in the investigation, the information must be treated confidentially, and all reasonable steps taken to reduce the risk the whistleblowers' identity will be revealed.**

Whistleblowers' identity is also protected in court proceedings. Their identity, or documentation likely to uncover their identity, is not required to be disclosed to a court or tribunal unless the court thinks it's necessary.

b) Disclosures to a legal practitioner are protected **Disclosure to a lawyer to obtain legal advice or representation in relation to tax whistleblower law is protected, even if a person does not qualify to be an eligible tax whistleblower.**

c) Civil, criminal and administrative liability protection **Whistleblowers are protected from civil, criminal and administrative liability in relation to their disclosure. Any information incriminating them will not be treated as admissible evidence in criminal or penalty proceedings. If the disclosure reveals a breach in the whistleblower's personal tax affairs they may have immunity against any criminal or penalty proceedings. This immunity does not prevent the ATO from issuing a tax assessment or imposing an administrative penalty in respect of their tax liability. However, the ATO may treat the disclosure as a voluntary disclosure in determining penalties for any unpaid tax.**

d) Detrimental conduct protection **Disclosures are protected from detrimental conduct. It's illegal for anyone to cause detriment to whistleblowers in relation to a disclosure, or suspected disclosure. For example, whistleblowers can't be dismissed, harassed or intimidated, harmed or injured by their employer or have their property, business or your financial position damaged.**

e) Compensation and other remedies **Whistleblowers can receive compensation if a court finds they suffered detriment in relation to their disclosure. Remedies include paying damages, reinstating employment, an injunction to prevent or stop detrimental conduct and an apology.**