



Fair Work
Commission

Designated Official and Manager's Guide to Handling Matters within Registered Organisations

Whistleblower tools and checklists

Guidance Note



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Introduction and purpose

This guide has been created by the Fair Work Commission (the Commission) to provide designated officials/managers, senior officers and committees of management within registered organisations with tools and procedures to effectively encourage, manage, and support people who wish to raise complaints, breaches of internal rules or policies, or make reports of 'Disclosable Conduct' within an organisation. This includes conduct by a member, employee or officer of a registered organisation or a branch of an organisation.

Please note: Disclosable Conduct attracts particular protections under the *Fair Work Registered Organisations Act 2009* (the RO Act), in particular to protect disclosers and others from reprisals being taken against them. This guide explains what Disclosable Conduct is and what the protections are.

The terms used in this guide are explained in more detail at [Appendix A – Glossary of Terms](#).



Part 1: Creating and encouraging a ‘speak up’ culture at the organisation

Organisations with the best approach to handling complaints about service, breach of internal rules or policies, or reports of Disclosable Conduct actively encourage and enable people to raise concerns with a designated official/manager as soon as practical. This creates a ‘speak up’ culture where complaints and other matters can be addressed in the best interests of the organisation and the people involved with it.

The most effective way to encourage the right behaviours is to be an organisation that models the right behaviours from the top down, is transparent and consistent in the manner it conducts its activities. Organisations that model the right behaviours, encourage the early reporting of issues and act with integrity, have higher levels of engagement and are recognised as workplaces of choice.

What kinds of matters could a designated official/manager be asked to deal with?

As a designated official/manager within the organisation, you may be approached to deal with a range of matters such as complaints about service, a breach of internal rules or policies, or a concern relating to Disclosable Conduct. It is important that you are aware of, and can distinguish between, the types of matters that may be raised with you, so that you can take the appropriate action.

Some examples of matters that you may be required to deal with are:

a. Complaints

A person believes the Organisation:

- supplied them with a level of service that they believe to be unreasonable;
- supports a policy that they do not agree with;
- needs to take action in relation to some other matter that they are dissatisfied with.



While complaints may be seen as trivial by some, they are often seen as important by others and there may be good reason they have been raised. In dealing with them, it may be the case that a simple explanation, an adjustment or an improvement in communication is necessary.

Even in cases where there may be no formal remedy, it is important that complaints are handled appropriately as they may be an indicator of larger issues, or mishandling can result in further, more serious complaints.

b. Breaches of internal rules or policies

Internal rules or policies refer to the powers and duties that are set out in the Organisation's rule book and/or policies. The RO Act specifies what the rules of Organisations are required to include, and provides for the powers and duties of committees and officers (section 141(1)(b)(i)). It also provides external mechanisms for the performance and enforcement of rules (sections 164 and 164A).

Examples include:

- disciplinary procedures not being followed;
- members not being able to participate in the affairs of the organisation;
- the Organisation, its officers, employees and members, otherwise not abiding by the Organisation's own rules;
- other grievances by a member, employee or officer of an organisation or a branch of the organisation that may not amount to a contravention of the law. Typically these may fall under the 'Human Resources' area of responsibility;
- any other breach of an internal policy of your registered organisation by a member, employee or officer of an organisation or a branch of the organisation.

Potential breaches of internal rules and policy should be taken seriously, and time made to assess and justify the designated officer's/manager's response to dealing with them. It is in the Organisation's best interests to deal with these matters appropriately from the outset in order to ensure the Organisation is meeting its obligations.

c. Reports of Disclosable Conduct



Disclosable Conduct is conduct, as defined in the RO Act, that may be reported to the Commission or other responsible external agencies, which amounts to a suspected contravention of a Commonwealth law.

Disclosable Conduct is defined in section 6 of the RO Act as follows:

Disclosable conduct means an act or omission that:

- a. contravenes, or may contravene, a provision of this Act, the *Fair Work Act* or the *Competition and Consumer Act 2010*; or
- b. constitutes, or may constitute, an offence against a law of the Commonwealth.

Although Disclosable Conduct can be reported to external agencies, such as the Commission, in many cases, if it is dealt with promptly and effectively, the organisation will be capable of dealing with the matter internally to reach an appropriate resolution.

Some examples include:

- refusing membership of an organisation when eligible (section 166, RO Act);
- using an organisation's resources to favour one candidate over another in an organisation's elections (section 190, RO Act);
- breach of duties as an officer or employee in relation to financial matters (sections 285 to 288, RO Act);
- coercion to exercise or not exercise a workplace right (section 343, FW Act);
- adverse action due to membership/non-membership of an industrial association (section 346, FW Act);
- breach of right of entry notice requirements (section 487, FW Act);
- hindering or obstructing an entry permit holder (section 502, FW Act);
- dishonest conduct by an employee or officer of an organisation or branch.

As a designated official/manager, you may be asked to assess or investigate reports of Disclosable Conduct. This guide aids you in carrying out that responsibility and appropriately addressing the matter.



Part 2: Who can report Disclosable Conduct?

The following people can raise Disclosable Conduct under the RO Act:

- an officer or former officer of an organisation or branch of the organisation;
- an employee or former employee of an organisation, or a branch of the organisation;
- a member or former member of an organisation, or a branch of the organisation;
- a person who is (or was) a supplier to, or had a transaction with, the registered organisation, or one of its branches, officers or employees;
- an employee (or former employee) of a person who was a supplier to or had a transaction with a registered organisation, or one of its branches, officers or employees;
- a lawyer on behalf of a discloser in one of the above categories.

Disclosures to the Commission and other external agencies

Where a matter is about Disclosable Conduct, any of the above people (disclosers), whether they are internal or external to the organisation, are entitled to raise their concerns directly with the Commission or another agency designated to receive disclosures.

If the disclosure qualifies as a protected disclosure (see **Glossary**), the discloser (whether internal or external) will be afforded protection in terms of the RO Act. As such, any reprisal action taken against a person because they disclose (or may disclose) to an external agency may be unlawful.



Part 3: Roles and responsibilities when handling matters

Leadership directly influences and affects the success of the reporting process and the experiences of those involved. Evidence indicates that a person's reporting of wrongdoing occurs more frequently to designated officers/managers who display high levels of ethical leadership, i.e. demonstrated integrity, transparent decision-making and high ethical standards. In simple terms, people who trust leaders are more likely to report wrongdoing to leaders within their organisation than those who do not.

By actively encouraging such characteristics in others also, leaders emphasise a safe working environment, which in turn encourages and supports internal reports of wrongdoing as people trust in the reporting process and consider the risks of reporting issues are reduced.

The table below outlines the roles and responsibilities which work together to deal with complaints about service, a breach of internal rules or policies, or reports of Disclosable Conduct within the organisation.



Table: Roles and responsibilities

Role	Responsibility
Officers/employees/ members/suppliers	All officers, employees, members and suppliers are responsible for raising matters, enabling a strong 'speak up' culture and abiding by the law.
Designated official/manager	<p>Designated officers/managers are, in many circumstances, the first and most important point of disclosure for persons who perceive wrongdoing.</p> <p>The role of the designated official/manager is to lead by example, model expected behaviour and set a clear tone about the types of conduct that are unacceptable.</p> <p>Designated officials/managers should encourage people to raise issues with them by being visible and approachable as well as displaying open communication skills.</p> <p>If a designated official/manager receives a disclosure, it may be their role to notify the nominated senior officer, or another senior officer within the organisation, and escalate accordingly.</p>



Role	Responsibility
<p>Investigator</p> <p>(Also takes on the role of the Whistleblower Investigation Officer (WIO) under the Whistleblower Policy)</p>	<p>The role of the investigator is to gather evidence, including interviewing witnesses, to communicate with the person reporting, the person under investigation and witnesses, and finally prepare a report on their findings and recommendations – subject to the rules of the organisation.</p> <p>The investigator will be chosen by the nominated senior officer – subject to the internal rules of the organisation.</p>
<p>Nominated senior officer</p>	<p>The nominated senior officer is a person in the organisation who is familiar with the organisation’s processes and procedures and takes responsibility for the matter and addressing any outcomes or findings.</p> <p>The role of the nominated senior officer is to assess the matter and determine the recommended next steps (investigate, refer to another body, etc). The nominated senior officer will assign an appropriate individual to investigate the matter if an investigation is required. This may be a designated official/manager, a member of the relevant committee, Human Resources, an external party or an elected officer of the organisation as provided for in the rules of the organisation.</p> <p>The investigator will report their findings back to the nominated senior officer. The nominated senior officer will then work with the organisation to determine the appropriate course of action.</p>



Role	Responsibility
Human Resources/Committee	<p>Human Resources or the relevant committee may receive complaints, alleged breaches of internal rules and policies, or concerns of Disclosable Conduct. They may work alongside the nominated senior officer and investigators during the course of the investigation and assist the organisation in determining the appropriate course of action upon any findings.</p> <p>*Not all organisations will have a Human Resources department or committee that deals with human resource matters. If a committee or Human Resources representative is not available, refer to a nominated senior officer or a designated official for assistance.</p>
Whistleblower Protection Officer (WPO)	<p>The Whistleblower Protection Officer (WPO) is an officer or employee appointed by the organisation who is independent of the investigation process itself and whose role is to ensure disclosers/whistleblowers who report Disclosable Conduct are protected from reprisal in accordance with the provisions of the RO Act or any applicable Whistleblower Policy.</p>



Part 4: Tips for handling matters

It is important to ensure the organisation's response and demonstrated actions in relation to reported matters increases faith in the reporting process, as failures in these areas have both been found to be important reasons for people in deciding not to report wrongdoing.

Properly investigating breaches of internal rules or policies, or a report of Disclosable Conduct involves a number of steps, where an investigator (such as a designated official/manager, or a Human Resources staff member (if an HR department exists)) undertakes a fact-finding process by gathering and examining information. The nature and scope of an investigation will be dependent on the specific circumstances of the matter and the rules of the organisation.

The following steps outline the elements that the Investigator should consider as part of carrying out an investigation (while always having regard to the rules of the particular organisation). In addition, see the [Investigation templates](#) available at the [Commission's website](#) for further assistance.

1. Understand the situation and allegation/s

Clarify the allegation or issues and what kind of resolution the person is seeking. Is the matter a service complaint, personnel/human resources grievance issue, a breach of internal rules or processes or a report of Disclosable Conduct? Not surprisingly, different matters require a different level of response. Do the organisation's rules and policies outline how to handle such matters?

When speaking to the person who has raised the matter, gather as much information as possible i.e. names, details, dates, times, persons involved, witnesses, other relevant information and evidence, etc.

2. Wellbeing check and risk assessment

Consider the wellbeing and safety of the person who reported the matter and other relevant parties. Has the person raised any concerns for their wellbeing or safety? And if so, have steps been taken to address these concerns? Remember that reprisal action taken against the discloser may be prohibited under the RO Act.



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Are there any steps you need to take, such as moving the person to another role or area, providing a support service such as the employee assistance program (EAP) or similar, providing the person with the details of the Whistleblower Protection Officer (WPO), if you have one, to assist the person who has raised the matter?

The Commission's [Fact Sheet Protection for Whistleblowers \(FS003\)](#) – available on the Commission's website – provides comprehensive information on the protections available.

3. Conflicts of Interest

Before commencing any investigation, the nominated senior officer and the investigator should consider whether they have any actual, potential or perceived conflicts of interest that may prevent them from objectively and appropriately dealing with the matter.

Consider also the perception of others who may become aware of any investigation. Would they perceive you to have an actual or potential conflict of interest? If yes, have you declared the conflict of interest to the organisation and are you the appropriate person to be involved?

4. Select the appropriate investigative approach

Where appropriate and possible, seek to achieve resolution. It may not be necessary to continue with an investigation unless there are systemic or serious issues that require full investigation. In cases where resolution can be reached rather than the need to go to a full investigation, document the agreed action and outcomes.

If the matter is unable to be resolved through resolution, determine the appropriate action to be taken such as an internal review or, if required, the investigative approach. This can depend on factors such as legal requirements that may apply, the rules of the registered organisation or the nature of the issue.

5. Ensure proper powers and authority

Ensure the investigator has the appropriate authority to conduct the investigation in accordance with the organisation's rules (e.g. who is authorised to appoint them), and that the investigator has the relevant tools to ensure they can obtain evidence in relation to the matter. It is important to



ensure that the investigator has suitable access to information and systems and has the required knowledge of the organisation's internal rules and processes.

6. Records management

The nominated senior officer and investigator should agree on where and how records, documents and notes will be recorded in relation to the investigation. A thorough investigation is built on justified actions and confidential and secure records management. Ensure all relevant information in relation to the investigation, and all information on which you have based a decision, is recorded and securely stored for future reference. This is especially crucial in times where investigation processes or the investigation approach is challenged.

7. Plan the investigation

The investigator should outline the allegation/s to be investigated, scope and develop an investigation plan. The plan should be agreed by the nominated senior official and used as a 'sense check' throughout the investigation.

If new allegation/s are raised throughout the investigation, a decision must be made whether they will form part of the investigation scope, or form the basis for a new, separate investigation.

Ensure there is appropriate support and oversight for the investigator. This will avoid investigators being left alone or not supported until an error is identified or complaint about the length of time the investigation is taking is raised.

See the Commission's [Investigation Plan template](#) to assist you plan out the investigation.

8. Obtain evidence

Carry out the investigation by gathering sufficient reliable information to enable the allegation/s to be properly explored and addressed, consider all relevant information and document all lines of inquiry, and why they were or weren't followed, as part of the records management. This should include what 'type' of evidence was examined, such as:

- Written evidence;
- Photographic evidence;



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- Oral evidence; and/or
- Electronic evidence.

9. Procedural Fairness

There are three key components of procedural fairness (natural justice) that are applicable, whether or not they are expressly provided for in the rules of the organisation:

- The person against whom the allegations have been made has the right to be heard, and have an opportunity to respond formally to the allegations before a decision is reached;
- There must be no bias – meaning the decision maker should be impartial and be free of actual or apparent bias. A common method of addressing this issue is separating the function of investigator to that of decision maker; and
- The decision must have a basis in fact – focus on the issues, evidence and facts. Be able to articulate your rationale for reaching a decision.

10. Apply the burden of proof to your findings

Investigations within organisations will be carried out on the balance of probabilities (more likely than not). The burden of proof is the gauge by which the decision-maker must decide whether the evidence or material before them supports the finding that an allegation has, or has not, occurred.

When investigating and applying the burden of proof, each allegation will be assessed independently and assigned a 'finding'. Commonly these findings will be issued with one of the three potential outcomes:

- c. The allegation was substantiated (the weight of evidence suggests the allegation was more likely than not to have occurred);
- d. The allegation was not substantiated (the weight of evidence suggests the allegation more than likely did not occur);
- e. Inconclusive/unable to determine (the weight of evidence does not lead to a finding of substantiated or not substantiated).



Access the [Investigation Plan template](#) available on the Commission's website for assistance in preparing your findings.

11. Reporting and recommendations

Prepare a document setting out the background, scope of investigation, methodology and approach, allegation/s, findings with relevant facts, and recommendations. Recommendations could include remedies for the person who raised the issue, action to improve the organisation's processes and procedures or actions to address inappropriate conduct by an authorised party (e.g. through training, an appropriate disciplinary process or referral to an appropriate external authority).

12. Decide on what action is to be taken

Upon completion, the investigation report should be sent to the nominated senior officer or an officer or committee prescribed in terms of the rules of the organisation. The role of the nominated senior officer (or other designated officer or committee) is to review the investigation report and decide what action needs to be undertaken. This may include asking the investigator to revisit aspects of the investigation if the nominated senior official (or other designated officer or committee) believes the investigation was lacking in some aspect.

The nominated senior officer may undertake the review alongside Human Resources (if the organisation has a separate HR function) or another officer or committee of the organisation.

In matters where it is required, legal advice may be sought as part of the decision-making process.

13. Inform the parties

Upon completion of an investigation, the person who reported the matter and the person who was the subject of the allegation should be informed of the outcome according to the organisation's relevant internal rules, policies and other considerations.



Part 5: Confidentiality and Anonymity

Confidentiality

The organisation should seek to take all reasonable steps to maintain the confidentiality of the individuals involved but however should not give any guarantees of absolute confidentiality in relation to an investigation process. This is because people who are involved in the matter should be informed that, sometimes, depending on the circumstances of the matter, names or identifying details may need to be disclosed to persons assisting with the matter, or external agencies, during the course of the investigation. Where possible, parties should be informed when it is necessary to name them to other persons relevant to the investigation.

It is important to note that breaches of confidentiality are one of the key causes of reprisals against disclosers in investigations. When handling matters, relevant parties should be reminded of the need for confidentiality and that disciplinary action may be taken against those who breach it.

Anonymity

As a person within the organisation responsible for handling matters, you may receive anonymous reports of wrongdoing. Anonymous reports have significant limitations that may inhibit a proper and appropriate inquiry or investigation. These limitations may include the inability to gather additional particulars to assist the investigation. Even so, all reasonable steps should be undertaken to take anonymous reports seriously and take appropriate action, including, where warranted, investigation.



Part 6: Protection from reprisals

Protection within the Organisation

You should ensure the organisation's internal rules and policies, which outline how people who raise Protected Disclosures are to be protected, are followed. For example, if the organisation has a Whistleblower Policy, consider the measures that need to be applied internally to ensure the protections (from reprisals and threatened reprisals) which need to be observed and are applied if the person has reported something that is Disclosable Conduct.

Protection under the RO Act

The RO Act provides protection to a person who makes a 'protected disclosure'. A protected disclosure is defined in the RO Act. To qualify as a protected disclosure, the disclosure must:

- be made by a discloser listed in Part Four of this Policy;
- be about suspected Disclosable Conduct (as defined in Part Three of this Policy, i.e. a suspected contravention of relevant Commonwealth laws);
- be capable of being reported to an authorised recipient in a relevant government agency.

Importantly, the RO Act protects an eligible disclosure even if it is only reported internally to the registered organisation. This is because section 337BA of the RO Act stipulates that a disclosure is protected under the RO Act if the person made, or could have made, the disclosure to the Commission or other authorised recipient.

Section 337BA provides protection where:

- A person (the first person) takes a reprisal against another person (the second person) if
 - The first person causes (by act or omission) any detriment to the second person; and
 - When the act or omission occurs, the first person:
 - believes or suspects that the second person or any other person made, may have made, proposes to make **or could make a disclosure that qualifies for protection under this Part** [i.e. a disclosure to the Commission or another eligible agency]; or



- ii. should have known that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part.

This confirms that under the RO Act, if a person raises Disclosable Conduct within the Organisation, they will be afforded the same protection from reprisal as if they had reported the eligible disclosure to the Commission or another authorised recipient in an external agency.

Reprisals

A discloser is protected from reprisal being taken against them, to their detriment (whether by act or omission), as a result of making that disclosure.

Detriment is defined in Section 337BA of the RO Act as follows:

“Detriment includes (without limitation) any of the following:

- a. Dismissal of an employee
- b. Injury of an employee in his or her employment
- c. Alteration of an employee’s position to his or her detriment
- 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.”

Other examples might include harassment, discrimination, or preventing a person from accessing training and development opportunities available to others, etc.

Reprisals may be the subject of criminal penalties, civil penalties or other civil remedies (such as reinstatement, injunctions, etc) if the disclosure is the reason (or part of the reason) for the reprisal action being taken.



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A discloser who makes a protected disclosure will not be subject to:

- Any criminal or civil liability for making the disclosure, or
- The enforcement of any contractual or other right or remedy against them on the basis of their disclosure.

It is important to understand that if a person makes a protected disclosure, they are not exempt from the consequences of their own misconduct.

The Commission's [Fact Sheet Protection for Whistleblowers \(FS003\)](#) – available on the Commission's website – provides comprehensive information on the protections available.



Part 7: When to consider reporting Disclosable Conduct to the Commission

If the organisation has received a report of Disclosable Conduct, made an assessment, and is unable to investigate the matter (or it is inappropriate to do so), the designated official/manager should ask the discloser to report the matter to an appropriate agency depending on the nature of the conduct or to the Commission. You could also ask for the discloser's consent to report the matter to a relevant agency or the Commission on the discloser's behalf.

The Commission

Disclosable Conduct by unions and employer associations registered under the RO Act and/or by their officers or employees can be made to the Commission. (This can occur at any time, regardless of whether or not it has been reported internally).

The Commission accepts information regarding Disclosable Conduct about organisations failing to comply with the requirements of the RO Act. For instance, conduct relating to:

- a. mishandling of organisation funds
- b. misconduct by officers in their officer duties (particularly in relation to financial management)
- c. non-compliance with provisions regarding elections, financial reporting, record keeping and the financial disclosure requirements of the legislation;
- d. a suspected contravention of any other provision of the RO Act, the *Fair Work Act 2009*, the *Competition and Consumer Act 2010* or an offence under a Commonwealth law.

When the Commission receives a report relating to Disclosable Conduct, the Commission will undertake an assessment of the matter to confirm it meets the definition of a protected disclosure under the RO Act.



If the matter meets the requirements of a protected disclosure it will be allocated to an authorised official in the Commission or another prescribed agency who will be responsible for investigating the protected disclosure. There are certain timeframes that the authorised official will be expected to adhere to during their investigation.

For the purpose of the investigation, the authorised official may request further information from the discloser or the organisation or from other parties. Upon the finalisation of investigation, the person who made the protected disclosure will be informed by the authorised official:

- That the investigation has been completed; and
- Whether further action will be undertaken. This will include whether there were any recommendations proposed by the authorised officer.

Where appropriate, the organisation will be notified of the outcome of the investigation, particularly where including where further action (including the taking of remedial steps) is required of the organisation.



Part 8: What to do before making a report of Disclosable Conduct to the Commission?

The Commission has an [Investigation Checklist](#) which the designated official/manager or discloser should consider before contacting the Commission, as it will assist in determining the appropriate agency where the Disclosable Conduct should be directed.

Other useful resources

Further information	Website/Email	Telephone
Fair Work Commission Mail: GPO Box 1994, Melbourne VIC 3001	www.fwc.gov.au regorgs@fwc.gov.au	1300 341 665
Fair Work Ombudsman	www.fairwork.gov.au	13 13 94



Appendix A – Glossary of Terms

Term	Description
Authorised recipient	An authorised recipient means: <ul style="list-style-type: none">• the General Manager of the Fair Work Commission;• a tribunal member of the Fair Work Commission or an employee of the Fair Work Commission;• the Australian Building and Construction Commissioner;• a Deputy Australian Building and Construction Commissioner;• an Australian Building and Construction Inspector;• an employee of the Office of the Fair Work Ombudsman.
C&C Act	Means the <i>Competition and Consumer Act 2010</i> .
Complaints	An officer, employee or member believes the organisation: <ol style="list-style-type: none">a. supplied them with a level of service that they believe to be unreasonable;b. supports a policy that they do not agree with;c. needs to take action in relation to some other matter that they are dissatisfied with.



Term	Description
Discloser	A discloser is a person who reports any actual or suspected wrongdoing relating to the organisation. A discloser, in certain instances, will be afforded certain protections under the RO Act.
Disclosable Conduct	Disclosable Conduct is defined in section 6 of the <i>Fair Work (Registered Organisations) Act 2009</i> as follows “ disclosable conduct means an act or omission that: a. contravenes, or may contravene, a provision of this Act, the <i>Fair Work Act</i> or the <i>Competition and Consumer Act 2010</i> ; or b. constitutes, or may constitute, an offence against a law of the Commonwealth.”
Employee Assistance Program (EAP)	An Employee Assistance Program is an employee benefit program that assists employees with personal problems and/or work-related problems that may impact their job performance, health, mental and emotional well-being
FW Act	Means the <i>Fair Work Act 2009</i> .
Internal rules and policies	Refers to the powers and duties of the Organisation and its officers, which are provided for in the Organisation’s rule book. The RO Act requires the rules of Organisations to provide for specific items, including the powers and duties of committees and its officers (section 141(1)(b)(i)).



Term	Description
Matters	Refers to alleged contraventions of the internal rules, or policies of a registered organisation and Disclosable Conduct which are in the scope of this guide.
Official	An official means: <ul style="list-style-type: none">• the General Manager of the Fair Work Commission• a member of the Fair Work Commission or an employee of the Fair Work Commission• the Australian Building and Construction Commissioner referred to in subsection 15(1) of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i>• a Deputy Australian Building and Construction Commissioner referred to in subsection 15(2) of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i>• an Australian Building and Construction Inspector referred to in subsection 66(1) of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i>• an employee of the Office of the Fair Work Ombudsman.
Organisation	Means an organisation registered under the <i>Fair Work (Registered Organisations) Act 2009</i> and includes any branches and other structures within that organisation.



Term	Description
Protected disclosure	To qualify as a protected disclosure, the disclosure must: <ul style="list-style-type: none">a. be made by an eligible discloser (as defined in section 337A(1)(a) of the RO Act and listed in Part 3 of this document);b. be about suspected Disclosable Conduct (as defined in Part Two of this document, i.e. a suspected contravention of relevant Commonwealth laws); andc. be capable of being reported to an authorised recipient in a relevant government agency
Registered organisation	Means any organisation or association registered as such under the RO Act.
The RO Act	Means the <i>Fair Work (Registered Organisations) Act 2009</i> .
The Commission	Means the Registered Organisations Commission.
Whistleblower Policy	A Whistleblower Policy relates to an organisation's internal policy that deals with how officers, members, elected officials, employees and others can 'speak up' when they wish to raise matters about service, breach of internal rules or policies, or a concern relating to Disclosable Conduct. It often sets up the process for how someone can speak up and the internal protections the organisation offers to those who wish to raise certain matters.



Term	Description
Whistleblower Protection Officer (WPO)	A senior officer of the organisation who is responsible, as far is reasonably practicable, to protect any discloser who makes a complaint to the organisation and is accountable for the provisions of the Whistleblower Policy.



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Appendix B - Frequently Asked Questions

[What is an Organisation?](#)

[Who can general complaints about my Organisation be reported to?](#)

[Who are breaches of my Organisation's internal rules or policies reported to?](#)

[Benefits of reporting the matter to the organisation first?](#)

[When can a disclosure relating to Disclosure Conduct be made?](#)

[What happens when Disclosable Conduct is reported to the Commission?](#)

[Who should Disclosable Conduct be reported to?](#)

[What are some examples of Disclosable Conduct?](#)

[When will a disclosure be protected?](#)

[How can a disclosure be made?](#)

[What protections apply if a disclosure is made?](#)

[What does it mean to take a reprisal against someone?](#)

[What does it mean to cause detriment to someone?](#)

[What are the consequences of taking reprisal action?](#)



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What is an Organisation?

An organisation registered under section 18 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

Who can general complaints about my Organisation be reported to?

General complaints should be reported internally to your Organisation. The section of this Guide entitled **“What kinds of matters could a designated official/manager be asked to deal with”** outlines who the general complaint should be raised with.

External agencies, including the Commission, do not deal with general complaints unrelated to Disclosable Conduct. Attempting to report a general complaint (i.e. not disclosable conduct) externally might cause an unnecessary delay in resolving the complaint.

Who are breaches of my Organisation’s internal rules or policies reported to?

Like with general complaints, breaches of internal rules or policies are not dealt with by the Commission and other External Agencies. It is best to directly report a breach of the internal rule or policy to your Organisation.

The section of this Guide entitled **“What kinds of matters could a designated official/manager be asked to deal with”** explains the process to be followed to report a breach of an internal rule or policy. A designated officer/manager is normally the best person to report the breach of the internal rule or policy to.

If that isn’t practical, however, it can be reported to the Human Resources Department or a senior officer. Also consider reporting the breach to your Organisation’s Head Office or National Office.

Benefits of reporting the matter to the Organisation first?

There are many reasons why raising a matter within the Organisation in the first instance may be a good course of action. These include:

- the Organisation will most of the time be best placed to deal with and consider the matter.
- the Organisation might already be aware of the conduct forming the basis of the matter and currently be looking into it.



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- it will ensure that any damage being caused (or potential damage) by the matter can be stopped by the Organisation.
- regulatory and compliance bodies can sometimes take a while to deal with matters, and will often ask the organisation if it is aware of the matter and what it has done about it.

When can a disclosure relating to Disclosable Conduct be made?

A person falling into one of the following categories can make a disclosure relating to Disclosable Conduct as defined in the RO Act (and may be entitled to certain protections):

- an officer or former officer;
- an employee or former employee;
- a member or former member;
- a contractor or former contractor supplying services or goods to the registered organisation;
- any person who has or has had a transaction with an organisation or branch;
- an officer, employee or former employee of such a contractor;
- a lawyer on behalf of a discloser in one of the above categories

What happens when Disclosable Conduct is reported to the Commission?

When the Commission receives a disclosure, they will first make an assessment as to whether it meets the requirements of Disclosable Conduct.

If the disclosure meets the requirements of Disclosable Conduct, it will be allocated to an authorised official of the Commission who will be responsible for investigating the disclosure. There are certain timeframes that the authorised official will be expected to adhere to during their investigation.

For the purpose of the investigation, the authorised official may request further information and make further enquiries with the discloser or with other people for the purpose of their investigation. When the investigation is finished, the discloser will be informed:

- that the investigation has been completed; and



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- whether further action will be undertaken or not, including if there will be any referral to another agency for action, and the reasons for the authorised official's decision.

Who should Disclosable Conduct be reported to?

It is important to remember that even if the matter relates to conduct which falls within the definition of Disclosable Conduct (section 6 of the RO Act) it can, if practical and if the discloser is comfortable doing so, be reported to the Organisation in the first instance.

There are numerous different officials who are authorised by the RO Act to receive disclosures relating to Disclosable Conduct. These include:

- Staff, tribunal members and the General Manager of the Fair Work Commission;
- The Commissioner and Deputy Commissioners of the ABCC;
- An ABCC Inspector; and
- Staff of the Office of the Fair Work Ombudsman.

It is important to remember that if the matter does not relate to Disclosable Conduct, these external agencies may not be able to assist.

What are some examples of Disclosable Conduct?

It is important to remember that for conduct to be considered Disclosable Conduct, it must have been committed by an Organisation or a branch of such organisation or an officer or employee of such Organisation.

Some 'real world examples' of Disclosable Conduct include:

- where an organisation had made donations but failed to report those donations.
- where officials received undeclared payments.
- when the financial report was not provided to members;
- when statements in the financial reports are not correct.
- when an ineligible member voted in an election for a registered organisation.
- where there was misuse of credit cards by an official, including unauthorised and personal expenditure.



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- misrepresentation or non-disclosure by an officer which concealed breaches of their duties to the organisation.
- incorrect reporting of membership figures and failure to maintain accurate membership registers.
- officers of an organisation engaging in fraud and misappropriation of funds.

When will a disclosure be protected?

To qualify for protection under the RO Act, a discloser must have reasonable grounds to suspect that the information provided indicates one or more instances of Disclosable Conduct (i.e. contravention of the law) and that the Disclosable Conduct has been committed by an Organisation or a branch, or its officers or employees.

How can a disclosure be made?

A disclosure can be made to an authorised recipient in an External Agency either verbally or in writing. For details as to how to contact the relevant External Agency, can check their respective websites for the contact details.

What protections apply if a disclosure is made?

If reprisal action is taken because of a protected disclosure, the protections/consequences can include:

- civil remedies (including damages and injunctions);
- a civil penalty provision; and
- a criminal offence provision

A discloser who falls within the scheme will not be subject to:

- any criminal or civil liability for making the disclosure, or
- the enforcement of any contractual or other right or remedy against them on the basis of their disclosure.

A discloser receives qualified privilege in defamation proceedings where the discloser provided the information without malice.



PLEASE NOTE: Protections for disclosers continue to apply even if there is no investigation (Section 337CA).

What does it mean to take a reprisal against someone?

A person ('Joe') takes a reprisal against another person ('Mary') if Joe causes 'detriment' to Mary (either an act or omission) and when the act or omission occurs, Joe believes or suspects that Mary or any other person:

- made
- may have made
- proposes to make, or
- or could make

a disclosure that qualifies for protection in terms of the RO Act.

What does it mean to cause detriment to someone?

Detriment includes (but is not limited to):

- dismissal of an employee;
- injury of an employee in their employment;
- alteration of an employee's position to their detriment;
- discrimination between an employee and other employees;
- harassment or intimidation of a person;
- harm or injury to a person, including psychological harm;
- damage to a person's property;
- damage to a person's reputation.

However, it does not include circumstances where administrative action is reasonable to protect the person from detriment.



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What are the consequences of taking reprisal action?

An application to the Federal Court may be made for:

- an order for compensation for loss, damage or injury;
- an injunction to prevent or stop the effects of, or the threat of, the reprisal;
- reinstatement of employment.

The Federal Court may also make orders against a person who has aided, abetted, counselled, procured or induced the taking of (or threat of) reprisal against another person.

An application to the Federal Court may be made by any of the following:

- the person who is the target of the reprisal
- the General Manager of the Fair Work Commission
- the Fair Work Ombudsman

Taking (or threatening) a reprisal against a discloser or another person is also a criminal offence.

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This fact sheet is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Commission and its work. The Commission does not provide legal advice.