



EWBS

AUSTRALASIA | EUROPE | CANADA | USA | UK

Raising concerns within an Organisation A Discloser's Guide

Raising concerns within an Organisation
A Discloser's Guide

JANUARY 2020 | 1

Table of Contents

Overview	3
Part 1: Enabling and encouraging a culture of ‘speaking up’	5
Part 2: What are appropriate complaints to raise with the organisation?.....	6
When internal standards, rules or policies are not being adhered to	6
Understand the organisation’s expectations	7
Understand the issues for a Disclosure	7
Preparing to make a Disclosure	7
After making a Disclosure	8
Part 3: What are appropriate disclosures under a Disclosure Policy?	9
Part 4: Who should raise a matter within the organisation?.....	9
Part 5: What happens after a Disclosure is made to the organisation?.....	10
Part 6: What if the organisation won’t investigate?.....	11
Part 7: What matters can be reported to external agencies?.....	12
Registered Organisations Commission	12
<i>Fair Work Commission</i>	12
<i>Australian Competition and Consumer Commission</i>	12
<i>Australian Taxation Office</i>	13
<i>Privacy Commissioner</i>	13
Part 8: Where should a Disclosure to an external agency be made?.....	14
Part 9: How will a Discloser be protected?	15
Protections	15
Protection from Reprisals	15
Appendix A - Glossary of Terms	17
Appendix B - Frequently Asked Questions.....	18

Overview

This guide has been created to assist people who have encountered situations that are not consistent with an organisation's:

- Ethos
- Code of Conduct
- Policies or Procedure
- Way the organisation operates

A person in this situation might be wondering what action is appropriate and the options available such as:

- Internal communication with line managers
- Internal communication with responsible managers (eg: for theft of funds – Finance Department)
- Internal communication with people designated in the Organisation's Policy/Procedure (eg grievance – HR Department)
- External communication with people designated in the Organisation's Policy/Procedure (External Auditor)
- Adopting the processes set out in the Organisation's Disclosure (Whistleblower) Policy and communicating with internal and external people

This guide should be read together with your organisation's internal rules and policies for making disclosure and with the supporting resources available at the WBS Website.

It is important to understand that there are legal protections available when making a Disclosure under an organisation process. Complaints, grievances and other types of matters may be subject to a different process and afforded different protections.

This Guide has 9 Elements

1. Enabling and encouraging a culture of ‘speaking up’
2. What are appropriate complaints to raise with the organisation?
3. What are appropriate disclosures under a Disclosure Policy?
4. Who should raise a matter within the organisation?
5. What happens after a Disclosure is made to the organisation?
6. What if the organisation won’t investigate the Disclosure?
7. What matters can be reported to external agencies?
8. When should a Disclosure be made to an external agency?
9. How is a Discloser protected?

The document also includes:

- definitions for terms [Appendix A](#)
- Frequently Asked Questions [Appendix B](#)

Part 1: Enabling and encouraging a culture of ‘speaking up’

The most effective way to encourage the right behaviour is for people to model the right behaviour from the top down. This should be transparent and consistent with how the business conducts its affairs.

Organisations that model the right behaviour and act with integrity have higher people engagement. This fosters an environment where systems and controls, support the organisation’s objectives and enable the early reporting of issues, before they become problematic for the organisation and the organisation’s reputation.

Organisations focussed on improving and evolving tend to have:

- the best approach to handling complaints about service
- ways for early detection of breaches of internal rules or policies
- processes that actively encourage people to raise concerns with a designated official or manager as soon as practical.

Disclosure can also be viewed as a further element to support existing systems and controls and provide an additional support, where they are not performing as expected.

Disclosure is another avenue to ensure matters can be addressed in the best interests of the organisation, its shareholders and its people.

Part 2: What are appropriate complaints to raise with the organisation?

When internal standards, rules or policies are not being adhered to

Most organisations have clear published statements (supported by rules, policies and procedures) about appropriate conduct and behaviour. It is important to first assess the organisations' position and operating requirements through looking at all relevant guidance published by the organisation.

Sometimes the information is in one place and of a general nature and at other times there will be a detailed policy and procedure. This material will also guide you on the most appropriate course of action. The document should have a clear standard and process that you can use to determine whether there is an issue that needs to be considered.

The documents should also let you know:

- the correct behaviour, standard or process
- what are the expected steps to be taken at the initial level (and the exceptions to this, such as the procedure asks you to raise the issue with your line manager, when they are the person not operating in line with the financial processes)
- when to apply the rules in the Disclosure Policy

In addition some laws have specific external requirements that apply to an organisation – with the rules should be part of the organisation's rules. If the external requirements have not been incorporated into the rules of your organisation you may need to seek external assistance and/or review the Disclosure Policy. Examples include laws governing:

- Companies and Charities (eg: [Corporations Law](#) (ASIC))
- Companies listed on a Stock Exchange (eg: [Australian Stock Exchange](#) (ASX))
- Taxation matters (eg: [Australian Taxation Office](#) (ATO))
- Specific Organisations (eg: [Registered Organisations Commission](#) (ROC))
- Working Conditions (eg: [FairWork Ombudsman](#) (FWO))

Internal rules not aligned with legal requirements, or internal rules and policies not being applied appropriately can have significant issue for the organisation, its customers, its people and its shareholder. These issues should be taken seriously, and time made to assess them and then to review the designated officer's/manager's response to dealing with them.

It is always in the organisation's best interests to deal with matters early and appropriately from the outset in order to ensure the organisation is acting in accordance with the obligations in its own rules and policies.

Understand the organisation's expectations

If you consider something might not be right, then you should:

1. Check to see the organisation's expectation. As indicated this will be in documented (whether on paper, or online). Bear in mind that some issues might be governed by a number of policies or procedures. You will need to understand:
 - a. If the activity is covered by the policy and/or procedure
 - b. What the policy and/or procedure requires to be done
 - c. Whether the activities of concern are contrary to the policy and/or procedure

This is not a suggestion to collect the evidence yourself, but to understand whether you have the necessary information.

2. If you are unsure, seek advice from a relevant person, who may not be involved in the issue (eg: for a payments process, ask people in finance – ie: the process owner)
3. Understand the process you may need to embark upon. This includes:
 - a. Who must you discuss this with, at first instance (eg: your line manager) and what if this is not appropriate or possible
 - b. When you can escalate the matter – acceptable / non-acceptable response; time frames, next steps
 - c. When the organisation Disclosure Policy applies and what matters are excluded (eg: grievance)
 - d. When external parties should be approached for advice or to make a disclosure
4. What happens if you do not receive a timely response or response that makes sense

Understand the issues for a Disclosure

Where you intend to make a Disclosure, you should assess the organisations' position and operating requirements through looking at all relevant guidance published by the organisation. This applies to Disclosures under the organisation's Disclosure Policy and to disclosures to external parties.

This should include:

1. When you will be protected under the Disclosure Policy because the disclosure is a protected disclosure and what is not a protected disclosure
2. The process for a disclosure including internal and external points of contact nominated by the organisation
3. Your right to remain anonymous and how to do this
4. Your right to be protected from reprisal for making a Disclosure

Preparing to make a Disclosure

Prior to making a Disclosure please keep in mind that there are always a number of plausible scenarios, based on the information that you have to disclose and what might be uncovered during the investigation of a Disclosure. This can include interviews with the people identified as being involved. Accordingly, you may be interviewed – not as the Disclosure – but as a person who might have information relevant to the investigation.

When considering what and how to disclose consider:

1. You may not have all of the information. Keep to what you know, if you are unsure, then about factual information:
 - a. use words like, might, may, etc
 - b. use a date range
 - c. provide information and data
 - d. do not make accusations, eg: X is s a thief, Y is a rapist
2. At the early stage it is not always clear if a crime has been committed. While it is common to talk about theft and a thief, until there is a conviction that these words become relevant.
3. During an investigation (and in a Disclosure), it is really an assertion that:
 - a. a person has some property or money in their possession
 - b. it is not clear what their authority is for this
 - c. (and) the policy indicates that this should not be the case

After making a Disclosure

Once you make the Disclosure, you will need change your mindset. Particularly some Disclosers maintain views such as:

- **I need to continue pursue the matter.** The point of making the Disclosure is to ensure people with more information and with dedicated resources are aware of the issues and now have the opportunity to investigate the matter. While this can be difficult, once you make the Disclosure you need to be prepared to “let go”. Where the organisation decides not to investigate, then you may need to consider making a Disclosure to and external party. The contents of this Document apply equally to this decision as well.
- **You should be interested in the outcome.** Generally, the aim of the disclosure is to prevent something occurring or recurring. In limited circumstances the issue might be an unlawful activity. Unfortunately, in most instances and in most organisation, the investigation and change process can be slow. The outcome will eventuate when the organisation has digested the information and planned its response. As you have limited influence in this outcome, there is limited reason to set your worth on whether the organisation implements the required action, the way you want or expect.
- **People know that you made the Disclosure.** It is not unusual for people making disclosures to form this view. In many cases people speculate on the identity or the role of the person who made the disclosure. Speculation and conjecture by people and examining others in an attempt to identify the Disclosure should not be taken as “proof of a leak”. Disclosers may be overly sensitive ton this issue where they had already raised the matter internally. Generally, in most organisations multiple people have raised an issue, with multiple people before a formal disclosure is made under the Disclosure Policy
- **You have done the wrong thing.** Stay calm. While people in the organisation might be upset, the organisation has been clear in its expectations. If the people were doing what the organisation requested, then there would be no need to make a Disclosure. The inappropriate conduct is the issue, not that someone had to report it.

Part 3: What are appropriate disclosures under a Disclosure Policy?

The Disclosure Policy will list out what is in and what is out.

Some Disclosure Policies only list the issues required by the laws that apply to the organisation. Others have a much broader range of issue that can be reported.

Some Disclosure Policies are explicit in excluding certain matters. For example, a personal grievance that has clear designated process under specific policy, is unlikely to be valid Disclosure. In some Disclosure Policies, grievance is specifically excluded.

It is also important for the Disclosure to be made in accordance with the options available under the Disclosure Policy. A Disclosure to a person or contact point not in the Disclosure Policy is not Disclosure and may not be protected.

Part 4: Who should raise a matter within the organisation?

The Disclosure Policy will list out what is in and what is out. In some cases, the group of people is limited to employees. In other organisations, the group is quite wide and includes contractors, suppliers and relatives of employee (past and present)

Where you are disclosing to an external party, it is appropriate that you ensure that your disclosure is within their scope and within your authority.

Raising the matter early also allows it to be addressed in the right way by an appropriate person within the organisation.

You should not attempt to conduct any investigation yourself before raising the matter as this could interfere with any future actions or, in rare cases, could put your safety at risk.

Part 5: What happens after a Disclosure is made to the organisation?

Generally, once the nominated person for the organisation receives a Disclosure the organisation will assess the information. This might include:

- Obtaining more information
- Considering other Disclosures that might have been made
- Reviewing the current rules, policies and procedures
- Applying the Disclosure Policy
- Determining the best way to approach the investigation after considering the potential outcomes, complexity and people concerned with the outcome, including:
 - Formal investigation, with interviews and gathering of material
 - Informal investigation

Once all relevant information has been obtained Possible decisions include:

- a satisfactory explanation exists for the issues raised in the Disclosure
- the matter is resolved by speaking to one or more people and with specific action to be taken with the relevant person
- the matter is recorded and monitored at that point in time;
- a decision is made to conduct an investigation (formal or informal; internal or external)
- the matter is referred to another agency, including the police
- a combination or variation of the approaches listed above

Every Disclosure is unique from the perspective of the Discloser and the organisation. Accordingly, the approach to each disclosure will be different, with organisations considering other possible ways to ensure the Disclosure Policy and its intent is met.

Part 6: What if the organisation won't investigate?

In some instances, the organisation may decide not to take the Disclosure into an investigation phase. This could be because:

- the issues have already been raised and have been are being dealt with
- less formal action will suffice and has/will be taken and has/will be effective
- there is no or insufficient evidence available to support further investigation at this stage
- there relevant policy or the procedure does not apply
- the policy or the procedure needs to be updated to address the issue(s) raised by the Disclosure
- the organisation does not have the capability to investigate

If the organisation does not intend to investigate the organisations should provide you with the reason why (where you have elected to provide your identity or where there is an avenue to update you without disclosing your identity).

If you consider the reason for not investigating the disclosure is not sufficient you may consider asking for clarification or raising the matter with one of the alternative reporting options available to you.

If you still aren't satisfied, you might consider raising the matter with the relevant external agency, if one is suitable.

Part 7: What matters can be reported to external agencies?

External agencies may be able to assist you, where:

- the organisation was unable or unwilling to deal with the issues raised by your Disclosure
- you do not feel able to or that it is appropriate for you to raise the matter with the organisation
- the issues are outside of the Disclosure Policy and not addressed by another policy of the organisation
- the law permits or expects direct disclosure to the agency (eg: certain tax matters). For each agency you will need to consider the specific limitations and nominated processes to ensure that it is the right agency to raise your concern.

Below are some examples of some agencies and the areas of coverage.

Registered Organisations Commission

- Failure to disclose information/providing false information
- Failure to report any loan, grant or donation
- Failure to prepare and submit financial reports
- Lodging false, misleading or reckless information with the ROC
- Elections
- Officer Conduct
- Reprisals

Fair Work Commission

- A contravention by the organisation, or an officer of an organisation, of an order of the Fair Work Commission
- When the organisation prevents or coerces a person from, exercising a workplace right, or taking adverse action against them for doing so
- When the organisation or one of its officers or employees hinders, obstructs or misleads an inspector, or other person who is exercising a power under the Act

Australian Competition and Consumer Commission

- anti-competitive conduct such as cartel conduct, exclusionary conduct, misuse of market power or secondary boycotts.

Australian Taxation Office

- misconduct or an improper state of affairs or circumstances in relation to tax affairs of the entity

Privacy Commissioner

- data breach where the following criteria are met:
 - unauthorised access to or disclosure of personal information held by an organisation or agency (or information is lost in circumstances where unauthorised access or disclosure is likely to occur).
 - likely to result in serious harm to any of the individuals to whom the information relates.
 - the organisation or agency has been unable to prevent the likely risk of serious harm with remedial action

Below are some examples of the laws relevant for disclosures.

- Pt 9.4AAA, The Corporations Act 2001
- Part IVD of the Taxation Administration Act 1953
- Fair Work Act 2009
- Privacy Act 1988
- Australian Securities and Investments Commission Act 2001
- Banking Act 1959
- Financial Sector (Collection of Data) Act 2001
- Insurance Act 1973
- Life Insurance Act 1995
- National Consumer Credit Protection Act 2009
- Superannuation Industry (Supervision) Act 1993
- 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

Part 8: Where should a Disclosure to an external agency be made?

Each agency has their own approach and is dependent on the nature of the laws that they administer. Examples include:

- [Charities and Not for Profits](#)
- [Companies](#)
- [Taxation](#)
- [Registered Organisations](#)
- [FairWork](#)

Remember: The external agencies listed above do not deal with general complaints, levels of service concerns or cases where you disagree with a policy decision of the Organisation.

The disclosures in this Fact Sheet are more around accountability, governance or financial management.

Part 9: How will a Discloser be protected?

Protections

Disclosers are protected in a number of ways where the disclosure is made under the Disclosure Policy and consistent with the Disclosure Policy, including:

- Who can receive and access the disclosure and information about the discloser?
- Rules and procedures to prevent the identity of the discloser becoming known beyond the people required to know
- Access to anonymous disclosure processes
- Specific offences for disclosing the identity of the discloser
- Specific action taken against the discloser

Some laws also might give you additional or similar protection where your disclosure is consistent with the requirements under the external agency laws.

Protection from 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. The range of conduct that may be a 'detriment' is broad and can include the following actions.

- dismissal of an employee;
- injury of an employee in his or her employment
- alteration of an employee's position to his or her detriment
- discrimination between an employee and other employees of the same employer
- 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
- preventing a person from accessing training and development opportunities that are made available to others

Reprisals may also 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.

However, 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 people undertaking the reprisal may also be subject to disciplinary actions, including dismissal, by the organisation.

A person who makes a protected disclosure is not subject to:

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

A person who makes a protected disclosure is has access to:

- qualified privilege in defamation proceedings where the discloser provided the information without malice
- ongoing protection even if there is no investigation or the investigation does lead to a formal outcome, provided the law or the Disclosure Policy has been adhered to

Appendix A - Glossary of Terms

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 law and under the Disclosure Policy.
Disclosure Policy	A Disclosure 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.
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 Disclosure Policy.

Appendix B - Frequently Asked Questions

[Who should I report complaints about my organisation to?](#)

[Who should I report breaches of my organisation's internal rules or policies to?](#)

[Should I try to get as much evidence as possible before raising a matter?](#)

[Why should I first report the conduct to the organisation?](#)

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

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

[How can a person make a disclosure?](#)

[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?](#)

Who should I report general complaints about my organisation to?

General complaints should be reported internally to your organisation. The relevant, Department (Human Resource Finance, Safety or equivalent) is normally the best place to find further information about the process.

Who should I report breaches of my organisation's internal rules or policies too?

Like with general complaints, breaches of internal rules or policies are not generally dealt with by the external agencies. Your manager is normally the best person to report the breach of the internal rule or policy to.

If that isn't practical, however, you can report it to the relevant, Department (Human Resource Finance, Safety or equivalent). You should also consider reporting the breach to your organisation's Head Office or National Office.

Should I try to get as much evidence as possible before raising a matter?

Raising your matter early with your organisation also allows it to be addressed in the right way by an appropriate person within your organisation. Remember, you should provide relevant information, but you should not attempt to conduct an investigation yourself before raising the matter as this could interfere with any future actions or, in rare cases, could put your safety at risk.

The appropriate person within your organisation will be best placed to know what information they require and will be able to request this from you if need be.

Why should I first report the conduct to the organisation?

Although it might not seem like raising your matter with your organisation in the first instance is the best option, there are many reasons why it may be a good course of action. These include:

- your organisation will most of the time be best placed to deal with and consider the matter.
- your organisation might already be aware of the conduct forming the basis of the matter and currently be looking into it.
- 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 time to deal with matters and will often ask the organisation if it is aware of the matter and what it has done about it.

What are some examples of Disclosable Conduct?

It is important to remember that for conduct to be considered Disclosable Conduct, it **must** be nominated as such by the relevant law. Each external agency provided details about the conduct is concerned with and how to report the matter internally or externally as the case may be.

When will a disclosure be protected?

To qualify for protection, generally you must have reasonable grounds to suspect that the information you provide indicates one or more instances of conduct covered by the Disclosure Policy or the provisions of the relevant external agency.

How can a person make a disclosure?

Each organisation Disclosure Policy and each external agency provides details about the conduct is concerned with and how to report the matter internally or externally as the case may be.

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
- 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.

What does it mean to take a reprisal against someone?

One person takes a reprisal against another person and that action causes 'detriment' to the other person (either an act or omission).

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

What are the consequences of taking reprisal action?

A Court application may be made:

- for an order for compensation for loss, damage or injury
- for an injunction to prevent or stop the effects of, or the threat of, the reprisal
- for reinstatement of employment
- for orders against a person who has aided, abetted, counselled, procured or induced the taking of (or threat of) reprisal against another person

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

This Guide is not intended to be comprehensive. It is designed to assist in gaining an understanding of whistleblower schemes.

Ver.	Published	Changes
1	APRIL 2019	© WHISTLEBLOWING SERVICE 2019
2	JUNE 2019	Nominated Changes for 2020 start
3	JANUARY 2020	Broader range for considerations for Whistleblowers