



## Fact Sheet

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### Protection for Whistleblowers

Chapter 11, Part 4A of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) provides protection to a person who is eligible to be a whistleblower and who provides information to one of the officials referred to below which indicates disclosable conduct by either a

- federally registered employee or employer organisation (organisation) or a branch of such organisation; or
- an officer or employee of such organisation.

#### Who is eligible to be a whistleblower?

A whistleblower is a person, called the discloser, who provides information about disclosable conduct within an organisation or a branch of an organisation. This is called the disclosure.

To be eligible to be a discloser a person must be one of the following:

- (a) an officer or former officer of an organisation, or of a branch of an organisation;
- (b) an employee or former employee of an organisation, or of a branch of an organisation;
- (c) a member or former member of an organisation, or of a branch of an organisation;
- (d) a person who has, or had, a contract for the supply of services or goods to, or any other transaction with, an organisation or a branch of an organisation;
- (e) a person who has, or had, a contract for the supply of services or goods to, or any other transaction with, an officer or employee of an organisation or of a branch of an organisation who is, or was, acting on behalf of the organisation or branch; or
- (f) an officer, former officer, employee or former employee of a person or organisation named in either (d) or (e) above.

The discloser must have reasonable grounds to suspect that the disclosure indicates disclosable conduct by an organisation or a branch of an organisation or by an officer or employee of an organisation or a branch of an organisation.

#### What is disclosable conduct?

Disclosable conduct means an act or omission that either:

- contravenes, or may contravene, a provision of the RO Act or the *Fair Work Act 2009* or the *Competition and Consumer Act 2010*; or
- is, or may be, an offence against another law of the Commonwealth

#### To whom must the disclosure be made?

The disclosure must be made to an official. An official is any of the following:

- The Commissioner of the Registered Organisations Commission
- A staff member of the Registered Organisations Commission
- The General Manager of the Fair Work Commission
- A Member of the Fair Work Commission
- A staff member of the Fair Work Commission
- The Australian Building and Construction Commissioner
- A Deputy Australian Building and Construction Commissioner
- An inspector of the Australian Building and Construction Commission
- A staff member of the Office of the Fair Work Ombudsman

A disclosure can also be made to an official by a lawyer acting on the discloser's behalf.

## **How is a discloser protected?**

A discloser, who provides an official with information as set out above, 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 any legal proceedings for defamation where the discloser provided the disclosure information without malice.

It is important to understand that if a discloser reports a disclosure and the discloser has participated in the disclosable conduct which they disclosed, the discloser may still be liable for any misconduct they took part in related to the disclosable conduct. This is a separate issue to the discloser reporting the disclosable conduct to an official.

## **What is the discloser protected from?**

A discloser is protected from reprisal against them to their detriment (whether by act or omission), where the person taking or threatening to take reprisal believes or suspects that the discloser (or any other person) made, may have made or proposes to make, a protected disclosure. Detriment includes dismissal from employment, harassment or intimidation, discrimination, an alteration of employment position or harm or injury to a person, including psychological harm, or damage to property or reputation.

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 or 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 to take, reprisal against another person. It may also award compensation. An application to the Federal Court may be made by any of the following:

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

Taking or threatening to take a reprisal against a discloser and/or another person is also a criminal offence which is punishable by a pecuniary penalty and/or imprisonment.

## **Investigation of disclosure**

If a protected disclosure is made it must be allocated to an authorised official, generally within 14 days, and the discloser must be informed. The authorised official must investigate the disclosure unless a circumstance as set out in the regulations applies.

An investigation must be completed within 90 days after allocation to an authorised official unless the timeframe is extended by the Commissioner. Where this occurs, the discloser must be informed of the reason for the extension and the new completion date.

For the purposes of conducting an investigation the authorised official may obtain information and make further inquiries as is considered appropriate and must prepare a report on completion of the investigation. A finding made in relation to another investigation or inquiry may be adopted for the purposes of the investigation. Any decision made not to investigate, or not to continue investigating, a disclosure must be advised to the discloser and the Commissioner by the authorised official. The disclosure shall however remain a protected disclosure under the RO Act.

On completion of the investigation the authorised official must prepare a report of the investigation. The report must include the authorised official's findings (if any) and the recommended action (if any).

## **Disclosure to enforcement agencies**

The authorised official must, within 30 days of completion of the report, give a copy to the appropriate body if the report sets out action that is recommended to be taken by that body. The authorised official may redact from the report any identifying material or material which would be exempt under the *Freedom of Information Act 1982*.

### **Protection of witnesses**

A person is not subject to any criminal or civil liability because the person gives information, produces a document or answers a question requested by a person conducting an investigation and the information, document or answer is relevant to the investigation.

However, the protection does not apply to a person's liability for committing an offence against the *Criminal Code* (such as providing false or misleading information to a Commonwealth agency or official or making or using a forged document with the intent to defraud a Commonwealth official) or for their own conduct in relation to the information, document or answer.

### **Further reading**

A list of all registered organisations can be found on the [Commission's website](#).

The whistleblower provisions for disclosers are contained in sections 337A to 337DD of the RO Act. You can find a copy of the RO Act at [www.legislation.gov.au](http://www.legislation.gov.au)

Protection is also provided to whistleblowers under other Commonwealth legislation. Reports about wrongdoing by companies and company employees should be reported to the [Australian Securities and Investments Commission \(ASIC\)](#).

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This fact sheet is not intended to be comprehensive. The Registered Organisations Commission does not provide legal advice. Users must rely upon the relevant legislation which is set out in the *Fair Work (Registered Organisations) Act 2009* and the *Fair Work (Registered Organisations) Regulations 2009*.