



**Australian Government**

**Registered Organisations Commission**

# Agencies responsible for protected disclosures

Responding to protected disclosures under the RO Act is a collaborative effort between the following Government agencies: The Registered Organisations Commission (ROC), The Fair Work Commission (FWC), The Australian Building and Construction Commission (ABCC) and The Fair Work Ombudsman (FWO).

Agencies that are able to receive whistleblower disclosures must ensure that their staff are aware of their obligations under the whistleblower disclosure regime and comply with the prescribed timeframes.

A person can make a whistleblower disclosure through any method they choose. Therefore, the government agency may be contacted by email, post and telephone. A whistleblower does not need to identify themselves as a whistleblower or use any special phrasing to attract the protections and impose investigation obligations upon an agency.



## What is a protected disclosure?

The first step is determining whether the information received by the government agency amounts to a protected disclosure by a whistleblower. The disclosures which qualify for protection are outlined in section 337A of the RO Act. For further information, you can also refer to [Making a protected disclosure](#).

A protected disclosure can include information that is received by an authorised recipient in the agency's normal course of business.

A disclosure can also come to an agency from a person's lawyer on their behalf.

Once the agency has determined it is a disclosure, it must allocate the matter to an authorised official within 14 calendar days of receiving the disclosure.

## 2

### **The timeframes**

The timeframes for a protected disclosure investigation are very short and must be watched carefully. Within 14 calendar days of receiving the disclosure, the agency must allocate the disclosure to an authorised official. The investigation must be completed within 90 calendar days of the agency receiving the disclosure. Within 30 calendar days of writing the report, it must be provided to the relevant agencies and people. Extensions of time can be sought from the Commissioner if required.

For further information about timeframes, you can refer to the page on [Making a protected disclosure](#).

## 3

### **Allocate the matter to an authorised official**

Within 14 days of receiving the disclosure the matter must be allocated to an authorised official. The RO Act defines authorised official to mean:

- The Registered Organisations Commissioner
- The General Manager of the FWC
- An FWC Member
- The Fair Work Ombudsman

Before allocating a disclosure to an authorised official their consent to receive the allocation of the protected disclosure needs to be obtained. When seeking the consent of the authorised official, the authorised official should be notified of how long it has been since the disclosure was received.

The matter can be allocated to the authorised official within the agency that received the disclosure, or to an authorised official in a different agency more suited to the particular disclosure made.

The agency must notify the discloser that the allocation has been made.

## 4

### **Notify the ROC of the allocation**

If the matter is not allocated to the Commissioner, the Commissioner must be informed of the:

- Allocation of the disclosure to the authorised official
- Information that has been disclosed
- Suspected disclosable conduct
- Discloser's name and contact details (consent is required to disclose their name or contact details)

## 5

### **The authorised official must investigate**

The authorised official must investigate except in circumstances prescribed in the Fair Work (Registered Organisations) Regulations 2009. When an investigation is commenced it must be completed within 90 calendar days (unless an extension is granted).

The regulations set out situations in which an investigation does not need to be commenced or investigated further. These include:

- the information does not, to any extent, concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the discloser has informed the investigator that the discloser does not wish the investigation to be pursued, and the investigator is reasonably satisfied that there are no

matters concerning the disclosure that warrant investigation;

- it is impracticable for the disclosure to be investigated:
  - because the discloser's contact details have not been disclosed; or
  - because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the investigator asks the discloser to give; or
  - because of the age of the information;
- because the information is being, or has been, dealt with adequately in another manner (refer to regulation 176G)

If the authorised official determines not to commence an investigation, the discloser must be informed.

The authorised official must also inform the Commissioner that they do not intend to further investigate the disclosure and the reasons for the decision.



## **The investigation – the 90 day time limit and extensions**

Once the decision has been made to commence an investigation, the discloser must be informed that an investigation is required and the estimated length of the investigation.

The investigation must be concluded within 90 calendar days of the allocation.

If an extension of time is required beyond the 90 days, an application may be made to the Commissioner seeking an extension for any additional required period. The discloser is also able to seek an extension of time from the Commissioner. The Commissioner is able to extend the period by whatever amount of time the Commissioner considers appropriate.

Multiple extensions may be sought.

If an extension is granted, the Commissioner will inform the discloser of the extension and the reasons for the extension being granted. As part of notifying the discloser of an extension, the authorised official must also inform the discloser of the progress of the investigation.

## 7

### **Referral of matters to other agencies and authorities**

The RO Act includes, at section 337CD, the power to notify a member of an Australian Police force of evidence of an offence against a law of the Commonwealth, a state or territory. In circumstances where the offence is punishable by imprisonment of life or at least 2 years, the authorised official must notify the police.

If the authorised official suspects a breach of the Competition and Consumer Act 2010 they may disclose the information to the ACCC and/or the police.

Information may also be shared with other relevant agencies.

## 8

### **Completing the investigation**

Once the investigation is complete, the agency must notify the discloser of:

- the completion of the investigation
- and that:
  - the authorised official will/will not be taking further action as a result of the investigation
  - the authorised official will/will not be making

recommendations to other government authorities

The authorised official must also complete a report setting out:

- the matters considered in the course of the investigation
- the duration of the investigation
- the authorised official's findings (if any)
- the action (if any) that is being, has been, or is recommended to be, taken
- any claims made about, and any evidence of, detrimental action taken against the discloser and the response

Within 30 days of completing the report, a (redacted) copy of the report must be provided to any person or body that the report recommends takes action.

The official may redact any material likely to identify the discloser or another person or would result in the copy being exempt from the FOI Act or contravene a designated publicity restriction.



## **Notify the ROC of the completion of the investigation**

While it is not required by the RO Act, it is recommended that the agency inform the Commissioner of the completion of the whistleblower investigation.