



Australian Government
Registered Organisations Commission



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Discloser's Guide to raising concerns within Registered Organisations



Contents

Overview	3
Part 1: Enabling and encouraging a ‘speak up’ culture in organisations	4
Part 2: What kinds of matters can I raise with the organisation?	5
Complaints about service	5
Breaches of internal rules or policies	5
Reports of disclosable conduct	6
Part 3: Who can raise disclosable conduct?	7
Part 4: When can I raise a matter?	7
Part 5: Who should I raise a matter with in the organisation?	8
If I am an officer, employee or member of the organisation	8
If I am a supplier/person who has had a transaction	8
Part 6: What happens after I raise a matter with the organisation?	9
Part 7: What if the organisation won’t investigate?	9
Part 8: What types of disclosable conduct can be reported to the ROC and other external agencies?	10
Disclosable conduct which can be reported to the ROC in accordance with the RO Act..	10
Examples of possible breaches of the Fair Work Act 2009	11
Examples of possible breaches of the Competition and Consumer Act 2010.....	11
Part 9: Who do I report a matter to in an external agency?	12
Part 10: How will I be protected?	13
Protection under the RO Act.....	13
Reprisals	14
Other useful resources	15
Appendix A - Glossary of Terms	16
Appendix B - Frequently Asked Questions	19



Overview

This guide has been created by the Registered Organisations Commission (the ROC) to assist people who are considering raising a matter such as:

- a complaint about service;
- breach of internal rules or policies; or
- disclosable conduct as defined under the Fair Work (Registered Organisations) Act 2009 (the RO Act) in relation to an officer, employee or member of a registered organisation, or one of its branches.

This guide should be read in conjunction with your organisation's internal rules and policies and with the supporting resources available at the [ROC's website](#), or from the relevant external agency.

It is important to understand that there are legal protections available when reporting Disclosable Conduct, and that complaints about other types of matters may be subject to a different process.

This Guide is divided into 11 topics:

1. Enabling and encouraging a 'speak up' culture
2. What kind of complaints can I raise with the organisation?
3. Who can raise disclosable conduct?
4. Who should I raise a matter with in the organisation?
5. What happens after I raise a matter with the organisation?
6. What if the organisation won't investigate?
7. What types of conduct can be reported to the ROC and other external agencies?
8. Who do I report a matter to in an external agency?
9. How will I be protected?
10. Useful Resources

In addition, a full set of definitions for terms used in this Guide can be found at [Appendix A – Glossary of Terms](#), and answers to Frequently Asked Questions can be found at [Appendix B](#).



Part 1: Enabling and encouraging a ‘speak up’ culture in organisations

Organisations with the best approach to handling complaints about service, breach of internal rules or policies, or reports of disclosable conduct actively encourage people to raise concerns with a designated official or 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 its people.

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



Part 2: What kinds of matters can I raise with the organisation?

Complaints about service

Typically, examples include but are not limited to if an officer, employee, member or supplier believes that the organisation:

- supplied them with a level of service that the member believes to be unreasonable;
- failed to fulfil their consumer contractual obligations; or
- demonstrated otherwise inappropriate behaviour by a member, employee or officer of an organisation or a branch of the organisation.

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 or are developed consistent with it. The RO Act specifies what the rules of organisations are required to include, and provides for the powers and duties of committees and the offices in the organisation (s 141(1)(b)(i)). It also provides external mechanisms for the performance and enforcement of rules (s.164 and 164A).

Typical examples of breaches of rules or policies may 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 can fall under the Human Resources area of responsibility; and
- 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 policies 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 in the organisation's best interests to deal with these matters appropriately from the outset in order to ensure the organisation is acting in accordance with the obligations in its own rules and policies.



Reports of disclosable conduct

Disclosable Conduct is conduct which may be referred to the ROC, or other relevant external agencies, in accordance with the RO Act. Although disclosable conduct can be reported to external agencies, such as the ROC, the organisation may still be best placed to deal with the matter internally and reach an appropriate resolution.

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

Disclosable conduct means an act or omission that:

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

Some examples include, but are not limited to:

- false or misleading statement in application (Div.136, Criminal Code)
- refusing membership of a registered organisation when eligible (s.166, RO Act)
- using a registered organisation's resources to favour one candidate over another in a registered organisation's elections (s.190, RO Act)
- breach of duties as an officer or employee in relation to financial matters (ss.285 to 288, RO Act)
- coercion used to exercise or not exercise a workplace right (s.343, FW Act)
- adverse action due to membership/non-membership (s.346, FW Act)
- breach of right of entry notice requirements (s.487, FW Act)
- hindering or obstructing an entry permit holder (s.502, FW Act)
- secondary boycotts (s.45D, C&C Act)
- cartel conduct (Part 4, Division 1, C&C Act)
- dishonest or fraudulent conduct, including bribery and/or corruption.



Part 3: Who can raise disclosable conduct?

The following people can report Disclosable Conduct in relation to a registered organisation:

- an officer or former officer of the registered organisation, or one of its branches;
- an employee or former employee of the registered organisation, or one of its branches;
- a member or former member of the registered organisation, or one of its branches;
or
- 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.

Typically, the person who raises a report of Disclosable Conduct is referred to as a discloser.

Part 4: When can I raise a matter?

If you have a general complaint about service, breach of internal rules or policies, or a concern relating to disclosable conduct you should raise your concern with the organisation as soon as possible. This will ensure that the issue can be addressed in a timely manner and appropriate action taken.

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: Who should I raise a matter with in the organisation?

If I am an officer, employee or member of the organisation

Check the registered organisation's internal rules and policies for guidance in reporting your matter.

Typically, you may consider raising the matter through the following people within the registered organisation depending on the nature of the matter, who you are most comfortable discussing the matter with and who may be most appropriate in the circumstances:

- a) a designated official or manager
- b) a person from the relevant committee or human resources team
- c) a senior official or your National Office
- d) the organisation's Whistleblower Investigation Officer, if it has one
- e) in the case of a member, a local representative who is employed by the registered organisation (such as an organiser or industrial officer).

If I am a supplier/person who has had a transaction

Suppliers and persons who have had transactions with registered organisations may consider reporting matters through their account manager in the registered organisation. If for some reason it is not appropriate to report the matter through the account manager, they may also consider reporting the matter through the alternative options available to officers and employees above, or directly to the ROC or other appropriate external agency (as outlined below).



Part 6: What happens after I raise a matter with the organisation?

Generally, once the organisation receives a complaint about service, breach of internal rules or policies, or a concern relating to disclosable conduct, the organisation will assess the matter according to its internal rules and policies to determine the best way forward. This could then result in one of the following taking place:

- a satisfactory explanation can be provided in relation to the matter;
- the matter is resolved by speaking to one or more parties;
- the matter is recorded and monitored at that point in time;
- a decision is made to conduct an investigation;
- the matter is referred to another agency, or
- a combination or variation of the above.

As each reported matter can be different this list is not exhaustive and there may be situations where alternative action is taken.

Part 7: What if the organisation won't investigate?

In some instances, the organisation may inform you they do not intend to investigate your matter. Common reasons include; the matter has already been dealt with, less formal action will suffice, there is no or insufficient evidence available, or your organisation does not have the capability to investigate.

If you have been informed your organisation does not intend to investigate you should ask for the reason why. If you do not believe the reason is justified, consider 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 set out below.



Part 8: What types of disclosable conduct can be reported to the ROC and other external agencies?

If your organisation was unable to deal with your matter, or you do not feel it appropriate to raise the matter with your organisation, there are instances where external agencies such as the ROC may be able to assist. Where the matter relates to disclosable conduct under the RO Act.

Disclosable conduct which can be reported to the ROC in accordance with the RO Act

Examples include:

a) **Failure to disclose information/providing false information**

- A failure by the organisation, or one of its branches to disclose information to the members about the top officers and their remuneration, and payments made by the organisation to parties or bodies. This includes false or misleading statements.
- A failure by an officer to disclose to the organisation details of remuneration received from other relevant sources (such as Board memberships) and any personal interests or conflicts of interests the officer may have in relation to the organisation.

b) **Failure to report any loan, grant or donation**

- Any failure by the organisation, or branches in the organisation, to report any loan, grant or donation over \$1,000, within 90 days of the end of the financial year.

c) **Failure to prepare and submit financial reports**

- A failure by an organisation, or reporting unit in an organisation, to prepare and submit financial reports, including any false or misleading information in any part of the report. This includes improper conduct by an officer or member in the preparation or reporting process of the financial reports.

d) **Lodging false, misleading or reckless information with the ROC**

- A failure by the organisation to lodge particular records (and any changes to those records) in the timeframes set out in the RO Act, to enable the ROC to have accurate records in relation to registered organisations.

e) **Elections**

- A failure by the organisation or its branches to notify the ROC about an election that is required to be conducted.
- Unlawful conduct in relation to an election in a registered organisation. This may include improper use of the organisation's resources during an election process



(including assisting a candidate) and hindering or obstructing an electoral official, including providing false or misleading information to the electoral official.

f) **Officer Conduct**

- A breach of duties of officers and employees of the organisation in relation to financial matters, including the duty to act with care and diligence, to act in good faith, to not act in their own interest (or the interest of other persons) or to the detriment of the organisation.
- Any obstruction or interference in an investigation conducted by the ROC including concealing or destroying information, or providing a false or misleading statement during an investigation.

g) **Reprisals**

- Any reprisal taken against a person who has made or could make a disclosure and is eligible for whistleblower protection under the RO Act.

Examples of possible breaches of the Fair Work Act 2009

- 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 Fair Work Act 2009.

Examples of possible breaches of the Competition and Consumer Act 2010

- Behaviour by the organisation or its officers or employees that involves anti-competitive conduct such as cartel conduct, exclusionary conduct, misuse of market power or secondary boycotts.



Part 9: Who do I report a matter to in an external agency?

You, or your lawyer, can make a report of disclosable conduct to an authorised recipient. Authorised recipients of protected disclosures are detailed in section 337A(b) the RO Act as being:

- the Commissioner of the ROC or an employee of the ROC;
- the General Manager of the Fair Work Commission (FWC);
- an FWC tribunal member (i.e. a Commissioner, Deputy President, etc.);
- a member of the staff of the FWC;
- the Commissioner of the Australian Building and Construction Commission (ABCC);
- a Deputy Commissioner of the ABCC;
- an ABCC Inspector; and
- an employee of the Office of the Fair Work Ombudsman.

Visit the [ROC website](#) for information on making a disclosure relating to Disclosable Conduct to any of the authorised recipients listed above.

Remember: The external agencies listed above do not deal with general complaints about levels of service or cases where you disagree with a policy decision of your Registered Organisation that is not related to governance or financial management.



Part 10: How will I be protected?

It can seem challenging to 'speak up' and raise matters within an organisation but you should be aware that when it relates to Disclosable Conduct there are legal protections and processes in place to ensure that the matter you raise is dealt with appropriately and you will be protected.

You will be protected from reprisals under the RO Act when you raise a matter relating to Disclosable Conduct within your organisation, that you could have made to the ROC. In addition, you may disclose to the ROC or another relevant agency in spite of any contractual obligation that you have. This extended protection is another reason to consider raising matters within your organisation in the first instance, as it is usually the quickest and most effective option.

The organisation's internal rules and policies will often also outline internal processes and protections. For example, many organisations will have a Whistleblower Policy or other policy that will detail this information.

Protection under the RO Act

The RO Act provides protection to a person who makes (or is believed or suspected to have made) a 'protected disclosure'. A protected disclosure is defined in the RO Act. To qualify as a protected disclosure, the disclosure must:

- be made by an eligible discloser (as listed in section 337A of the RO Act and in this Guide);
- be about suspected Disclosable Conduct (as defined in section 6 of the RO Act, i.e. a suspected contravention of a relevant Commonwealth law); and
- be capable of being reported to an authorised recipient in a relevant government agency.
- Importantly, the RO Act protects an eligible disclosure, from associated reprisals, even if it is 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 ROC or other authorised recipient.

Section 337BA provides protection where:

1. A person (the **first person**) **takes a reprisal** against another person (the second person) if
 - a) *the first person causes (by act or omission) any detriment to the second person; and*
 - b) *when the act or omission occurs, the first person:*



- i. *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; 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 Disclosable Conduct is raised within the organisation by an eligible person, they will be afforded the same protection from reprisal as if they had reported the eligible disclosure to the ROC or another authorised recipient in an external agency.

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

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.

Detriment is defined in Section 337BA(2) 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, for example, preventing a person from accessing training and development opportunities that are made available to others.

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.

A person 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.

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

Other useful resources

Further information	Website/Email	Telephone
Registered Organisation Commission Mail: GPO Box 2983, Melbourne VIC 3001	www.roc.gov.au regorgs@roc.gov.au	1300 341 665
Fair Work Commission	www.fwc.gov.au	1300 799 675
Fair Work Ombudsman	www.fairwork.gov.au	13 13 94
Australian Building and Construction Commission	www.abcc.gov.au	1800 003 338
Australian Competition and Consumer Commission	www.accc.gov.au	1300 302 502



Appendix A - Glossary of Terms

Term	Description
Authorised recipient	<p>An authorised recipient means:</p> <ul style="list-style-type: none"> • the Registered Organisations Commissioner or a member of the staff assisting the Commissioner; • 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 Competition and Consumer Act 2010.
Complaints	<p>An officer, employee or member believes the organisation:</p> <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.
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	<p>Disclosable Conduct is defined in section 6 of the Fair Work (Registered Organisations) Act 2009 as follows.</p> <p>Disclosable Conduct means an act or omission that:</p> <ol style="list-style-type: none"> 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.



Term	Description
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 Fair Work Act 2009.
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 (s 141(1)(b)(i)).
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.
Organisation	Means an organisation registered under the Fair Work (Registered Organisations) Act 2009 and includes any branches and other structures within that organisation.
Protected disclosure	<p>To qualify as a protected disclosure, the disclosure must:</p> <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 2 of this document, i.e. a suspected contravention of relevant Commonwealth laws); and c) 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 Fair Work (Registered Organisations) Act 2009.
The ROC	Means the Registered Organisations Commission.



Term	Description
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.
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.



Appendix B - Frequently Asked Questions

[What is an organisation?](#)

[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?](#)

[When can I make a protected disclosure relating to Disclosure Conduct?](#)

[What happens when I report Disclosable Conduct to the ROC?](#)

[Who should I report Disclosable Conduct too?](#)

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

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

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

[What protections apply if I make a disclosure?](#)

[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?](#)

What is an organisation?

An organisation registered under sections 6 and 18 of the Fair Work (Registered Organisations) Act 2009 (the **RO Act**).

Who should I report general complaints about my organisation to?

General complaints should be reported internally to your organisation. The section of this Guide entitled 'Who should I raise a matter with in the organisation' outlines who you should raise the general complaint with. The Human Resource Department (or equivalent) is normally the best place to find further information about this process.

External agencies, including the ROC, do not deal with general complaints unrelated to Disclosable Conduct. Attempting to report your general complaint might cause an unnecessary delay in resolving your complaint and you are encouraged to instead report your complaint to the relevant person in your organisation.



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 dealt with by the ROC and other external agencies. You are best placed to report a breach of the internal rule or policy to your organisation directly.

The section of this Guide entitled "Who should I raise a matter with in the organisation" explains the process you should follow to report a breach of an internal rule or policy. 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 Human Resources Department or a senior officer. 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.

When can I make a protected disclosure relating to Disclosable Conduct?

If you fall into one of the following categories, you 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 I report Disclosable Conduct to the ROC?

When the ROC receives a disclosure from you, 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 (in order for it to be a protected disclosure), it will be allocated to an authorised official of the ROC 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 you or with other people for the purpose of their investigation. When the investigation is finished, you will be informed:

- that the investigation has been completed; and
- whether further action will be undertaken or not, including if there will be any referral to another agency for action, and the authorised official's decision.

Who should I report Disclosable Conduct 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) you can, if practical and if you are comfortable doing so, report it 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:

- the Commissioner of the ROC and his staff;
- 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 your matter does not relate to Disclosable Conduct, these external agencies may not be able to assist you.

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;
- 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, you must have reasonable grounds to suspect that the information you provide indicates one or more instances of Disclosable Conduct (i.e. contravention of a Commonwealth law) and that the Disclosable Conduct has been committed by an organisation or a branch, or its officers or employees.

How can I make a disclosure?

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, you can check their respective websites for the contact details.

What protections apply if I make a disclosure?

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.



What are the consequences of taking reprisal action?

An application to the Federal Court or the Federal Circuit 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 and the Federal Circuit 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 or the Federal Circuit 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) a reprisal against a discloser or another person is also a criminal offence.

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This Guide is not intended to be comprehensive. It is designed to assist in gaining an understanding of the RO Act's whistleblower scheme. The Registered Organisations Commission does not provide legal advice.

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