

Whistleblower

Version: 4

Published: 7 Oct 2020, 7:13 AM

Last edited: 1 Oct 2020, 1:18 PM

Approved: 7 Oct 2020, Annette Allen

Next review: 24 Feb 2021

Introduction

New Haven Farm Home is committed to fostering a culture of ethical behaviour and good corporate governance. We will not tolerate any corrupt, illegal or other undesirable conduct by any of our staff, nor condone victimisation of an individual who intends to report or has reported such conduct. New Haven Farm Home supports any staff member in the reporting of improper conduct. This policy is designed to promote open communication throughout the organisation, develop practices that reduce the risk of improper conduct and safeguard the reputation, values and ethics of New Haven Farm Home.

The purpose of this Policy is to:

- provide you with an understanding of what can be reported under this Policy;
- demonstrate the importance New Haven Farm Home places on ensuring a safe and supportive environment where our people feel confident to raise breaches of internal rules or Disclosable Conduct relating to the organisation, its branches, officers, employees or members;
- assist to create a culture within New Haven Farm Home that encourages our people to speak up and raise breaches of internal rules or policy, or Disclosable Conduct relating to the Organisation, its branches, officers, employees or members;
- explain the processes for reporting breaches of internal rules or policy, or Disclosable Conduct, including what happens when you make a report; and to
- outline how you will be protected if you make a report.

Applicability

When

- applies when reporting non-compliant or improper conduct.

Who

- applies to all members of staff, management and Board.

Definitions

Term	Description
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Whistleblower	A Whistleblower is a person who makes a disclosure relating to a breach of internal rules or Disclosable Conduct under this policy. A Whistleblower may request protection either in terms of this Policy or in terms of the RO Act.
responsible person	Applies to: - the CEO, or - the Chair of the Board (in the event the report is about the CEO)
authorised recipient	An authorised recipient means: - The Registered Organisations Commissioner or a member of the staff assisting the commissioner - the General Manager of the Fair Work Commission - a Fair Work Commission or an employee of the Fair Work Commission - an employee of the Office of the Fair Work Ombudsman - The NDIS Quality and Safeguarding Commission - Stopline Pty Ltd or Stopline staff as the organisation's externally managed disclosure service
Whistleblower Investigation Officer (WIO)	A senior officer of the Organisation who is responsible for leading, co-ordinating or overseeing the investigation of matters in a fair, confidential, objective (without bias) and timely manner.
Whistleblower Protection Officer (WPO)	A senior officer of the Organisation who is responsible, as far as is reasonably practicable, to protect any discloser who makes a report to the organisation and is accountable for the provisions of this Policy.

improper conduct/misconduct	Refers to: • a breach of the organisations policies • illegal activity, such as theft, drug sale, violence, etc. • a breach of generally recognised principles of ethics, such as: ◦ corrupt conduct ◦ maladministration ◦ harassment or discrimination ◦ serious and substantial waste of resources ◦ practices endangering the health or safety of the staff, volunteers or the general public ◦ practices endangering the public ◦ practices which may cause serious financial loss ◦ practices which may damage NHFH's reputation
retaliation	Actions against a Whistleblower that include: • being victimised, disadvantaged or penalised, or • being subjected to retaliatory action, retribution, reprisal, harassment or other similar outcome. It includes, but is not limited to: • real acts • explicit acts • implied acts • passive aggressive suggestions and actions.

Documents relevant to this policy

	Competition and Consumer Act 2010 - Vol 1	
	Competition and Consumer Act 2010 - Vol 2	
	Competition and Consumer Act 2010 - Vol 3	
	Corporations Act 2001 (Cth)	
	Fair Work (Registered Organisations) Act 2009	
	Public Interest Disclosure Act 2013 (Cth)	
	ROC Fact Sheet - Protection for Whistleblowers (FS003)	
	Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019	
	Treasury Laws Amendment (Mutual Reforms) Act 2019 (Cth)	
	Whistleblower Protection Act 2019	

The scope of this policy

People

The following people can make a disclosure within the Organisation:

- a director of the organisation

- an officer or former officer of the Organisation, or one of its branches;
- an employee or former employee of the Organisation, or one of its branches;
- a member or former member of the Organisation, or one of its branches; or
- a person who is (or was) a supplier to, or has (or had) a transaction with, the Organisation or one of its branches;
- a person who is (or was) a supplier to, or has (or had) a transaction with, an officer or employee of the Organisation or one of its branches;
- an employee (or former employee) of a supplier or person who had such a transaction^[1]; or
- a lawyer on behalf of a discloser in one of the above categories.

Conduct

The scope of this Policy relates to conduct which:

- breaches the Organisation's internal rules and policies; and/or
- is Disclosable Conduct under the Registered Organisations Act (including alleged reprisals for making a disclosure) as defined in Part 4 of this Policy (as well as in section 6 of the Fair Work RO Act 2009).^[1]

Out of scope - complaints and grievances

From time to time you may have a complaint in relation to service levels, policy decisions, or an employment-related grievance with another person within the organisation, which is not Disclosable Conduct or a breach of the Organisation's rules or policies.

If you have a complaint about a service issue or policy decision or you wish to raise a grievance issue, refer to the Complaint Management policy or speak to your supervisor, or the relevant committee or Human Resources' contact person.

Defining Disclosable Conduct

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

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

Disclosable conduct means an act or omission that:

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

Although Disclosable Conduct can be reported to external agencies, such as Stopline or the ROC, 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.

What is (and isn't) 'Disclosable Conduct'

Not everything that can be complained about amounts to Disclosable Conduct.

As defined above (and in the RO Act) Disclosable Conduct must be a suspected breach of the RO Act, the Fair Work Act or the Competition and Consumer Act 2010, or criminal offence.

Examples of things which **would** be Disclosable Conduct include:

- A breach of an officer's duties to the organisation in relation to financial management;
- providing false or misleading information in a document;
- misuse of the organisation's resources;
- unauthorised payments being made;
- election-related offences;
- coercion to exercise or not exercise a workplace right;
- refusing membership to a person entitled to be a member;
- failing to lodge required documents.

However, things that (on their own) would usually **not** be Disclosable Conduct include:

- complaints about the level of service received from the organisation or a particular official;
- a difference of opinion about a policy adopted by the organisation;
- not being elected as a workplace representative;
- employment disputes with your employer (where your employer is not the registered organisation);
- disagreeing with the decision of the organisation to donate to a particular cause.

Reporting Disclosable Conduct

Every director and employee in the Organisation has a role and responsibility in ensuring the Organisation is run ethically and in accordance with its internal rules and policies. Where matters related to breaches of internal rules or policies or Disclosable Conduct are identified they should be raised as soon as possible. In instances where a person has concerns about making a report, reports can be made anonymously.

Who can report a matter?

Directors, officers, employees, members, suppliers

All Directors, officers, employees, members and suppliers are an essential part of reporting matters to the Organisation. It is not acceptable to 'walk past' or 'turn a blind eye' to reportable matters.

If you become aware of a matter you should raise it as soon as practical with the people responsible for handling matters, outlined below. Raising your matter early allows it to be addressed in the right way by an appropriate person. 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.

If you have fears for your wellbeing, safety, or fear of reprisal as a result of raising your matter, you should mention these at the time you report the matter. You will be noted by the Organisation as a Discloser, and afforded the protections outlined under this Policy, and where eligible legislative disclosure requirements are met, protected under the provisions of the RO Act.

Who should I report my matter to?

Your supervisor or HR Officer

Sometimes, a suspicion of wrongdoing may arise from a misunderstanding and is not in fact wrongdoing. Accordingly, you are encouraged to check with your designated official/supervisor or HR Officer to seek an immediate response as internal channels of reporting are favoured. Remember, in some instances, communication is restrained by confidentiality requirements or other legitimate reasons. However, where you believe the response to your matter

raised is not appropriate, then the organisation's externally managed disclosure service, Stopline, is available alongside alternative reporting mechanisms.

What happens when you report Disclosable Conduct to your organisation

When you report a matter of a breach of internal rules, policy or Disclosable Conduct under this Policy, you should provide as much information as possible. Information such as dates, times, location, individuals involved, other witnesses, physical evidence (e.g. documents, images) and any other general information may be helpful to assist the Organisation to determine how to take appropriate action.

Any information you provide to the Organisation may be used by the Organisation in assessment of an investigation or other appropriate action. Examples of actions could include:

- 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 going forward;
- a decision is made to investigate (internally or via independent, external investigators);
- the matter is referred to another agency; or
- a combination of the above.

If the Organisation determines that your matter should be investigated, the investigation may be conducted by the Whistleblower Investigation Officer (WIO), an appropriately capable officer or employee of the Organisation nominated by the WIO, or by our external disclosure management service, Stopline, which has been appointed by the Organisation. All investigations will be conducted in a manner that is procedurally fair, confidential, conducted without bias and in a timely manner.

At the end of an investigation, you will be informed of the outcome of the investigation by the Organisation. The Organisation may in certain circumstances, whether required by law or in its discretion, inform the ROC, the Fair Work Commission or the relevant authority of any contents of the investigation.

How are you protected?

Confidentiality

If you report a breach of internal rules or policies, or a concern relating to Disclosable Conduct to the Organisation under this Policy, you will have your details, and the information you provide, treated in strictest confidence. The Organisation will only share your details on a need to know basis with those within the Organisation who have a role to play in looking into your matter. In addition, there may be certain times under applicable law where the Organisation is required to share your details as part of its legal obligations.

Protection

New Haven Farm Home is committed to ensuring that if you raise a matter under this Policy you are provided support and protection from reprisal or personal or financial disadvantage because of making that report.

You will be protected under the RO Act when you raise a matter relating to Disclosable Conduct within your Organisation, just the same as you would have been if you had raised the Disclosable Conduct with Stopline or the ROC.

This extended protection, is another reason raising matters within your Organisation in the first instance is usually the quickest and most effective option.

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.

Importantly, the RO Act protects an eligible disclosure even if it is reported internally to the registered organisation. This is because 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. Under the RO Act, if you raise Disclosable Conduct within the Organisation, you will be afforded the same protection from reprisal as if you had reported the eligible disclosure to the ROC 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 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."*

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 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.

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 (FS003) can be found in NHFH's documents (Legislation) and provides comprehensive information on the protections available.

Anonymity

Anonymous reports of wrongdoing are accepted under this Policy. Anonymous reports may have significant limitations that inhibit a proper and appropriate inquiry or investigation. These limitations may include the inability to provide feedback on the outcome and/or to gather additional particulars to assist the inquiry/investigation.

Failure to comply with this policy

Any breach of this policy may result in disciplinary action, including dismissal from the organisation.

Reporting Disclosable Conduct to an external agency

If your matter relates to Disclosable Conduct and it is not practical to report your matter within your Organisation in the first instance, you can report Disclosable Conduct to Stopline Pty Ltd, the organisation's externally managed disclosure service. You must make the disclosure to one of the following:

- Stopline Pty Ltd;
- the Commissioner or the staff of the ROC;
- the General Manager or the staff of the Fair Work Commission (the **FWC**);
- an FWC Member;
- the staff of the Fair Work Ombudsman;
- The NDIS Quality and Safeguarding Commission.

Any of these people are able to receive a disclosure from a Whistleblower and using it will trigger the whistleblower process. A Whistleblower is also able to give the information to their lawyer and have their lawyer contact one of the people in the above list with the information.

A person does not need to use the word 'whistleblower' to be protected however using it may help the agency receiving the information quickly to recognise the importance of the disclosure. The person also has no obligation to give the agency their name or contact details, however this can have implications as to whether a disclosure is able to be properly investigated.

For further details as to what constitutes Disclosable Conduct, visit the ROC's website: www.roc.gov.au and read the information on "What is Disclosable Conduct".

This policy is to be reviewed by 1 December 2020.