



# WHISTLEBLOWER POLICY

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## **Introduction**

The IEU Victoria Tasmania is committed to adhering to its statutory obligations and its rules. We are committed to providing those involved with our union with a complying framework in which, if they occur, breaches of Rules or policy, or Disclosable Conduct relating to the organisation, its officers, employees or members, may be raised.

In cases where people feel they need to be protected in relation to raising a matter, this Policy outlines the protections that will apply.

## **Purpose**

The purpose of this Policy is to:

- provide you with an understanding of what can be reported under this policy;
- demonstrate the importance the IEU places on ensuring a safe and supportive environment where our people feel confident to raise breaches of the Rules or policies or Disclosable Conduct relating to the Union, its officers, employees or members;
- assist to create a culture within the IEU that encourages people to speak up and raise breaches of Rules or policy, or Disclosable Conduct relating to the union, its officers, employees or members;
- explain the processes for reporting breaches of the 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.

## **Scope**

### **The Scope of this Policy – People**

The following people can make a disclosure within the Organisation:

- 1) an officer or former officer of the Organisation
- 2) an employee or former employee of the Organisation
- 3) a member or former member of the Organisation; or
- 4) a person who is (or was) a supplier to, or has (or had) a transaction with, the Organisation;

- 5) a person who is (or was) a supplier to, or has (or had) a transaction with, an officer or employee of the Organisation;
- 6) an employee (or former employee) of a supplier or person who had such a transaction; or
- 7) a lawyer on behalf of a discloser in one of the above categories.

## **The Scope of this Policy – Conduct**

The Scope of this Policy relates to conduct which:

- breaches the Union’s Rules or policies; and/or
- is Disclosable Conduct under the RO Act (including alleged reprisals for making a disclosure) as defined in Part 4 of this Policy (as well as in section 6 of the RO Act).

## **Out of scope – Complaints and grievances**

From time to time you may have a Complaint in relation to service levels, representation, 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 matter such as these that complaint should be raised directly with the General Secretary for resolution. It is not covered by this Whistleblower Policy.

## **Defining Disclosable Conduct**

Disclosable Conduct is conduct, as defined in the RO Act, that may be reported to the Fair Work Commission 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:

- 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.*

Although Disclosable Conduct can be reported to external agencies, in most cases the IEU will be capable of dealing with the matter internally to reach an appropriate resolution.

Some examples include:

- refusing membership of an organisation when eligible (s.166, RO Act);
- using the organisation's resources to favour one candidate over another in an 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 to exercise or not exercise a workplace right (s.343, FW Act)
- dishonest conduct by an employee or officer.

Provided that it contravenes, or may contravene, a provision of the legislation or constitutes, or may constitute, an offence against a law of the Commonwealth.

## **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 a 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 (if this might constitute a contravention of the legislation or the Rules or policies of the Union);
- 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 documents required under legislation.

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

- complaints about the level of service received from the union or a particular official;
- decisions by the union on the provision of representation for members in individual matters
- a difference of opinion about a policy adopted by the Union;
- not being elected as a workplace representative;
- employment disputes with an employer;
- disagreeing with the decision of the union to donate to a particular cause.

## **Reporting Disclosable Conduct**

Every person in the Organisation has a role and responsibility in ensuring the Organisation is run ethically and in accordance with its Rules and policies. Where matters related to breaches of 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?**

#### **Officers, employees, members, suppliers**

As outlined in this policy, all officers, employees, members and suppliers are an essential part of reporting matters to the Organisation.

If you become aware of a matter you should raise it as soon as practicable 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.

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 the General Secretary**

Sometimes, a suspicion of wrongdoing may arise from a misunderstanding and is not in fact wrongdoing. Accordingly, you are encouraged to check with to seek an immediate response from your immediate supervisor or the General Secretary 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 alternative reporting mechanisms are available.

If you do not wish to raise the matter with your immediate supervisor or the General Secretary you should consider raising the matter with your IEU workplace representative so they can assist you in relation to your matter. Again, there are alternate reporting mechanisms available.

### **Federal Office**

If you do not feel safe, or it is not practical to raise the matter with your immediate supervisor or responsible elected official, or your workplace union representative you may consider raising the matter with the union's Federal Office so they can provide the assistance you need in relation to your matter.

### **Whistleblower Investigation Officer**

In cases where you do not feel safe to speak to any of the internal reporting channels, and you wish to be protected by the organisation as a part of raising your matter, you can report your matter to the Whistleblower Investigation Officer (the **WIO**) as described in this Policy. The WIO is a senior officer of the Organisation who is responsible for receiving whistleblower disclosures of wrongdoing and overseeing its investigation and resolution.

The WIO must (after reasonable assessment):

1. appoint a Whistleblower Protection Officer (the **WPO**) to provide support to the whistleblower;
2. be satisfied that action taken in response to the inquiry/investigation is appropriate to the circumstances;
3. ensure that all investigations are carried out in line with the principle of procedural fairness.

The WIO and WPO can be contacted through the channels below:

The **WIO** for matters covered by this policy is the General Secretary, Debra James.

## **What happens when you report Disclosable Conduct to your Union**

When you report a matter of a breach of the 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 that may be helpful to assist the Union to determine how to take appropriate action.

Any information you provide to the Union may be used by the IEU 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.

Where practicable, you will be contacted and advised of what action will be undertaken.

If the Union 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 union nominated by the WIO, or by an external investigator appointed by the Union. 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 may be informed of the outcome of the investigation by the union. The IEU may in certain circumstances, whether required by law or in its discretion, inform the Fair Work Commission or the relevant authority of any contents of the investigation.

## **How you are protected**

### **Confidentiality**

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

### **Protection**

The IEU 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 the IEU, just the same as you would have been if you had raised the Disclosable Conduct with the relevant external body. This extended protection is another reason raising matters within the IEU 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. To qualify as a protected disclosure, the disclosure must:

- be made by a discloser listed in Part 4 of this policy;
- be about suspected Disclosable Conduct (as defined in Part 3c of this policy, i.e. a suspected contravention of relevant Commonwealth laws);
- be capable of being reported to an authorised recipient in a relevant government agency.

Importantly, the RO Act protects an eligible disclosure 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 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 an 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 is defined in Section 337BA 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."*

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 (s 377B(1)(a)), or
- The enforcement of any contractual or other right or remedy against them on the basis of their disclosure (s 377B(1)(b)).

**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.**

## **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.

## **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 the relevant external agency. You must make the disclosure to one of the following:

- 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.

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 (see 'Anonymity' in the preceding section).

## Appendix A – Glossary of terms

<b>Fair Work (Registered Organisations) Act 2009</b>	
<b>Authorised Recipient</b>	<p>An Authorised Recipient means:</p> <ul style="list-style-type: none"> <li>• the Registered Organisations Commissioner or a member of the staff assisting the Commissioner</li> <li>• the General Manager of the Fair Work Commission</li> <li>• a Fair Work Commission or an employee of the Fair Work Commission;</li> <li>• an employee of the Office of the Fair Work Ombudsman.</li> </ul>
<b>Disclosable Conduct</b>	<p>Disclosable Conduct is defined in section 6 of the Fair Work (Registered Organisations) Act 2009 as follows.</p> <p><i>“Disclosable Conduct means an act or omission that:</i></p> <ul style="list-style-type: none"> <li>• contravenes, or may contravene, a provision of this Act, the Fair Work Act or the Competition and Consumer Act 2010; or</li> </ul> <p><i>constitutes, or may constitute, an offence against a law of the Commonwealth.”</i></p>
<b>Protected Disclosure (under the RO Act)</b>	<p>To qualify as a protected disclosure under the RO Act, the disclosure must:</p> <ul style="list-style-type: none"> <li>• be made by a discloser as defined in section 337A(1)(a) of the RO Act;</li> <li>• be made to an official; and</li> <li>• be made by a discloser who has reasonable grounds to suspect that the information indicates one or more instances of Disclosable Conduct by: <ul style="list-style-type: none"> <li>– the organisation or a branch of the organisation, or an officer or employee of the organisation or of a branch of the organisation.</li> </ul> </li> </ul>
<b>Registered Organisations</b>	<p>Registered Organisations are membership groups of employers or employees that have been registered under the RO Act. A Registered Organisation may also be referred to as a union.</p>
<b>The RO Act</b>	<p>Means the Fair Work (Registered Organisations) Act 2009, as amended.</p>

<b>The ROC</b>	Means the Registered Organisations Commission.
<b>Discloser (may also be called Whistleblower)</b>	A Discloser is a person who makes a disclosure relating to Disclosable Conduct under this Policy.
<b>Rules and policy</b>	Refers to the powers and duties of offices in the IEU which are provided in the IEU's rule book. The RO Act requires the rules of Organisations to provide for the powers and duties of committees and the officers (s 141(1)(b)(i)).
<b>Matters</b>	Refers to alleged contraventions of the Rules, policies and Disclosable Conduct which are in scope of this Policy.
<b>Organisation</b>	Means the Independent Education Union Victoria Tasmania
<b>this Policy</b>	Means this Whistleblower Policy.
<b>Union</b>	Means the Independent Education Union Victoria Tasmania
<b>Whistleblower (may also be called Discloser)</b>	A Whistleblower is a person who makes a disclosure relating to a breach of Rules or Disclosable Conduct under this Policy.
<b>Whistleblower Investigation Officer (WIO)</b>	A senior officer of the IEU who is responsible for leading, co-ordinating or overseeing the investigation of matters in a fair, confidential, objective (without bias) and timely manner.
<b>Whistleblower Protection Officer (WPO)</b>	Any senior officer of the Organisation, who may be appointed and whose responsibilities will include, as far is reasonably practicable, protection of any discloser who makes a report to the IEU and is accountable in respect of the provisions of this Policy.