

Policy025 Whistleblower



Foodbank Victoria

RESPONSIBLE DEPARTMENT:	People & Culture
DATE APPROVED:	20 August 2020
DATE OF NEXT REVIEW:	3 years
RELATED POLICIES AND DOCUMENTS:	Chain of Responsibility Policy Code of Conduct Complaints and Disputes Policy Environment Policy Fraud Policy Fundraising Policy Investment Policy Occupational Health & Safety Policy Privacy Policy Stock Use Policy Workplace Behaviour Policy

Purpose

Foodbank Victoria is committed to providing an ethically sound work environment for the benefit of all stakeholders.

Scope

All FBV employees, office holders, volunteers, contractors and suppliers, relatives and/or dependants of individuals connected to FBV.

Objective

FBV's Whistleblower Policy is designed to comply with the Australian *Corporations Act 2001* (Cth) which provides protection for certain individuals referred to in this Policy as 'Eligible Reporters' who make a qualifying disclosure. This policy sets out how disclosures under the Whistleblower Policy can be made and the protections that are available to Eligible Reporters.

The early identification of issues is critical to FBV's ability to manage risk. Employees are often the first to know about wrongdoing within an organisation and are best placed to know about the issues.

Key Principles

FBV encourages individuals to report anything they reasonably believe may be misconduct or an improper state of affairs or circumstances (a "Disclosable Matter") and to feel safe to come forward without fear of retaliation. Speaking up helps FBV to identify and address issues, and how we do business.

YourCall will receive all Whistleblower reports via hotline, web form, text message or mail. When individuals speak up under this Policy, the information they provide will be dealt with confidentially.

The Whistleblower Policy does not replace internal avenues to resolve complaints or disputes or for HR related grievances.

Policy

Definition of Whistleblowing

Whistleblowing occurs where a person discloses information, makes a complaint, or reports a matter where:

- The person making the disclosure is an eligible whistleblower; and
- The person to whom the disclosure is made is an eligible recipient; and
- The disclosure is about a disclosable matter.

Who can make a whistleblowing disclosure?

For a disclosure of information to be protected under whistleblowing laws, a person must be an “eligible whistleblower.” Eligible whistleblowers include a current or former:

- Officer, employee or volunteer at FBV;
- Supplier of goods or services to FBV (for example an independent contractor), including the supplier’s employees; or
- Relative or dependant of any of the above.

To whom can a complaint be made?

Under whistleblowing laws a protected disclosure can initially be made to:

- The Australian Securities and Investments Commission (ASIC) or another prescribed Commonwealth authority;
- A director, officer, auditor or senior manager of a company, or any other person authorised by the company to receive whistleblowing disclosures; or
- A legal practitioner for the purposes of obtaining legal advice or legal representation regarding the operation of the whistleblowing protections.

A senior manager means a person who:

- Makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
- Has the capacity to significantly affect the corporation’s financial standing.

What must disclosures be about to qualify for protection?

For a complaint or disclosure to be protected by whistleblowing laws the disclosing individual must have reasonable grounds to suspect that the organisation, and its officers or employees have engaged in a disclosable matter. The requirement for reasonable grounds of suspicion means that a whistleblower does not have to be able to prove the allegations made as part of a disclosure, however a mere allegation based on rumour might be insufficient to qualify for protection.

A “disclosable matter” is any “misconduct or an improper state of affairs” by FBV. This definition may potentially include any form of misconduct or wrongdoing undertaken by FBV, whether or not it breaches a particular law. For example, disclosable matters could include information about:

- Fraud;
- Improper use of company funds;
- Misleading or deceptive practices;
- Improper or dishonest accounting or financial reporting;
- Avoidance or mismanagement of taxation obligations;
- Risks to health and safety;
- Underpayments or breaches of the *Fair Work Act 2009*; or
- Other illegal activity or breaches of legal obligations.

Certain breaches of laws are expressly included in the *Corporations Act* as disclosable matters, but it is important to recognise that a disclosure might be about a “disclosable matter” even if it is not a breach of one of the expressly listed laws. The *Corporations Act* expressly defines disclosable matters to include information about the conduct that constitutes an offence against:

- The *Corporations Act 2001*;
- The *Australian Securities and Investments Commission Act 2001*;
- The *Banking Act 1959*;
- The *Financial Sector (Collection of Data) Act 2001*;
- The *Insurance Act 1973*;
- The *Life Insurance Act 1995*;
- The *National Consumer Credit Protection Act 2009*;
- The *Superannuation Industry (Supervision) Act 1993*;
- An instrument made under any of the above Acts;
- Any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- Represents a danger to the public or the financial system or is prescribed by regulations.

Personal work-related grievances

Where a person discloses information that concerns a grievance about any matter in relation to their employment or former employment that has (or tends to have) implications for the discloser personally, that disclosure might be a personal work-related grievance and be excluded from whistleblowing protection.

If a complaint does not qualify for whistleblowing protection because the personal work-related grievance exception applies, an employee who raises a complaint or enquiry about their employment is eligible for general protections provisions of the *Fair Work Act*. Employees can refer to the Complaints and Disputes Policy for more information.

Internal complaints process

In some instances, a complaint should be addressed internally via the Complaints and Disputes Policy (*Policy018*). FBV strives to provide a culture where people are comfortable to come forward to make a complaint. Alternatively, a complaint may not be a 'Disclosable Matter' under the Whistleblower definition.

Disclosure is protected under whistleblowing legislation

Where a person has made a protected whistleblowing disclosure, the person is protected against action (including civil or criminal liability) for making the disclosure, and no contractual remedy or right (for example a confidentiality clause in an employment contract or deed of release) can be enforced on the basis of the disclosure. The information will also not be admissible against the individual in criminal or civil penalty proceedings.

Protection from victimisation and detriment

The *Corporations Act* contains protections against a whistleblower suffering detriment as a result of making a whistleblowing disclosure, and FBV also has strict obligations to protect the identity of a whistleblower.

The *Corporations Act* prohibits a person from causing any detriment, or threatening to cause any detriment, to a whistleblower because that person believes or suspects that the whistleblower has made, or will make an eligible disclosure.

Detriment is defined widely for the purpose of this protection and includes:

- Dismissal;
- Injury of an employee in their employment;
- Alteration of an employee's position or duties to their detriment;
- Discrimination;
- Damage to a person's reputation, property, financial position; or
- Any other damage.

The protection does not require a person to have actually made a whistleblowing disclosure. It is sufficient if the detriment is caused or threatened on the suspicion that a person has made or might make a report.

Confidentiality of whistleblowers

Whistleblowing complaints may be made anonymously; and a whistleblower is protected by requirements to prevent disclosures of the whistleblower's identity. If a person makes a disclosure that qualifies for whistleblower protection, a person (including the recipient of the protected disclosure) must not disclose the identity of the whistleblower or disclose information that is likely to identify the whistleblower unless authorised by the Act.

The situations where disclosure is authorised under the Act are limited. The Act allows a whistleblower's identity to be revealed:

- With the consent of the whistleblower; or
- To APRA, ASIC or the Australian Federal Police; or
- To a legal practitioner for the purpose of obtaining legal advice.

While the subject matter of the whistleblowing disclosure can be revealed if it is reasonably necessary for the purpose of investigating the alleged misconduct or wrongdoing, the person

providing that information must ensure that the discloser's identity is not revealed and must take reasonable steps to prevent the whistleblower from being identified from the information.

FBV will take steps to ensure that:

- In addition to not revealing the identity of a whistleblower, any information that has the possibility of allowing a person to determine a whistleblower's identity is limited and available to only the people directly involved in managing or investigating the disclosure;
- All documents relating to a disclosure are stored securely and can only be accessed by those directly involved in managing and investigating the disclosure (for example ensuring that communications are not sent to email addresses or printers which may be accessed by other employees);
- The identity of the whistleblower is only revealed where clear consent has been provided, and that any disclosure of the identity is within the scope of that consent;
- Each person who is involved in managing or investigating a disclosure understands the obligation to keep the identity of the whistleblower and the disclosure confidential and is aware that an unauthorised disclosure of a whistleblower's identity may be a criminal offence; and
- There are safeguards to prevent a person from tracing the source of the anonymous disclosure. Expert IT advice may be required depending on the circumstances.

FBV have contracted an external provider, YourCall, to receive all whistleblowing disclosures. Their role is to ensure confidentiality and independence in assessing if a whistleblower complaint is an eligible disclosure.

Disclosure and investigation:

- It is at the discretion of the Whistleblower whether to disclose internally or to refer the matter to YourCall or an external agency. If the disclosure is internal, submit the information in hardcopy, email or call an Eligible Recipient with information regarding the issue. Your information and identity will be treated in accordance with this Policy.
- Eligible recipients will refer the matter to YourCall, FBV's external whistleblower service organisation. This is to ensure that matters are treated in an impartial and confidential manner, removing any potential for conflict of interest.
- FBV will only receive relevant and de-identified information from the 'Whistleblower' investigation organisation. This will protect the Whistleblower from any potential negative consequence of their disclosure.
- Any investigation conducted by FBV's Whistleblower organisation will be provided to the Eligible Recipient and to the Board for review and action.

Eligible Recipients of whistleblowing disclosures at FBV: Position	Name	Contact Details
Chair	Dorothy Coombe	dorothy@foodbankvictoria.org.au
CEO	David McNamara	davidmc@foodbankvictoria.org.au
CFO	Narelle Kingston	narellek@foodbankvictoria.org.au
People & Culture Manager	Melissa Milner	melissam@foodbankvictoria.org.au
Alternative eligible recipient (in a situation where the other recipients are the subject of claims)		
Audit and Risk Committee Chair	Stephen Audsley	Steve.audsley@foodbankvictoria.org.au

Whistleblower Secure Reporting

YourCall are FBV's external Whistleblower service who provide online access 24/7 via mobile or computer, a hotline available 9am-12am staffed by licenced investigators, and email or mail. Identifying information is removed and the complaint is passed to FBV for investigation.

This option allows you to:

- remain completely anonymous
- identify yourself to Your Call only
- identify yourself to both Your Call and Foodbank Victoria

You can contact Your Call to make a report:

- Website <https://www.yourcall.com.au/report>
- Telephone - 1300 790 228 between 9am and 12am business days.

You will be required to provide the Foodbank Victoria unique identifier code **FOODBANK20**.

Your Call remains the intermediary at all times, receiving and forwarding communication between all parties. The Foodbank Victoria Officers who will have access to your reports include:

Position	Name
Chair	Dorothy Coombe
CEO	David McNamara
CFO	Narelle Kingston
People & Culture Manager	Melissa Milner
Audit and Risk Committee Chair	Stephen Audsley

Your Call can exclude any of the above Officers upon your request.

You will also be able to securely upload any relevant documentation and/or material relevant to your disclosure.

After making a disclosure, you will be provided with a unique Disclosure Identification Number (DIN) and access to a secure online Message Board. The Message Board allows ongoing anonymous communication with Your Call and/or Foodbank Victoria. Your Call remains the intermediary at all times, receiving and forwarding communication between all parties. The Message Board can be used to receive updates, share further information/evidence and request support or report retaliation. If you cannot access the Message Board, you can contact Your Call via phone (above) for verbal updates.

External Agencies for whistleblowing disclosure:

Organisation	Contact Details
Australian Securities and Investments Commission (ASIC)	1300 935 075 Melbourne Office address Level 7 120 Collins St Melbourne Vic 3000
Australian Charities and Not-for-profits Commission	13 22 62 GPO Box 5108, Melbourne VIC 3001

Access to the Whistleblower Policy:

This policy is available on the All Staff shared drive, available to Board members through the Board Portal, to volunteers via Better Impact and available on our website.

Authorised:



David McNamara
Chief Executive Officer

Revisions

Revision Date	Updated by	Description
10/08/2020	People & Culture Manager	New policy

