

# HRNSW Whistleblower Policy

## Introduction

This policy is for general circulation.

HRNSW treats any allegation of misconduct, or an improper state of affairs or circumstances, in relation to HRNSW (including illegality, corruption or other ethical wrongdoing) very seriously. In many cases information regarding this conduct will be known only to an “insider”, who is exposed to or has knowledge of the conduct because they work with the wrongdoer. This policy provides a framework for those “insiders” to make disclosures in a manner that protects the disclosing party, or whistleblower, while serving the public interest. Note that for the purposes of this policy, a whistleblower need not be an employee. The categories of persons protected by the policy are set out under the heading “Who this policy applies to”.

In order to take advantage of this policy, you must make a disclosure in accordance with it.

This policy has been adopted having regard to the *Treasury Laws Amendment (Enforcing Whistleblower Protections) Act 2019*. This is Commonwealth legislation and the extent to which it applies to HRNSW as a State authority could be a matter of legal argument. Nevertheless, HRNSW has adopted this policy in accordance with its approach of implementing best practice in all areas of its administration.

This policy provides information about:

- (a) the protections available to disclosers;
- (b) the persons to whom, and how disclosures, that qualify for protection may be made;
- (c) how HRNSW will support disclosers and protect them from detriment;
- (d) how HRNSW will investigate disclosures that qualify for protection under this policy; and
- (e) how HRNSW will ensure fair treatment of all relevant employees.

In this policy a whistleblower is also referred to as a “discloser”.

### **Who this policy applies to**

This policy explains the protections available to whistleblowers (or disclosers).

Whistleblowers are typically employees who have concerns about the legality or ethics of an organisation’s conduct, but can cover a wide range of other persons, including officers, managers, directors, employees, individuals supplying goods and services to HRNSW and their employees, office holders of HRNSW and the relatives and dependents of any of these categories. All of those persons are protected by this policy.

### **Information to which this policy applies**

This policy applies to any information concerning misconduct, or an improper state of affairs or circumstances, in relation to HRNSW. Misconduct includes (but is not limited to) fraud, negligence, default, breach of trust and breach of duty.

### **To whom can disclosures be made**

Disclosers may make disclosures to a variety of persons, such as:

- An officer or senior manager of HRNSW. HRNSW’s Integrity Manager is the designated officer for this purpose, but if a discloser does not consider disclosure to that officer is appropriate, disclosure can also be made to the Chief Executive or the Chair.
- A legal practitioner, for the purposes of obtaining legal advice.
- In the case of tax matters, the Commissioner for Taxation.
- The Australian Securities and Investments Commission and the Australian Prudential Regulation Authority. Note however that as a State statutory authority, HRNSW is generally not subject to their jurisdiction.

### **Additional Disclosures After 90 days**

HRNSW will promptly investigate all whistleblower disclosures made to it and, to the extent that it is lawfully able to do so, HRNSW will report in general terms the results of the investigation to the discloser. Where a discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters it has disclosed to HRNSW within 90 days after that disclosure, then an additional disclosure may be made to the persons described below, providing that the conditions set out below are satisfied. Note that these conditions include prior written notification to HRNSW of the proposed additional disclosure. This written notification should be made to at least two of the following officers:

- the Chief Executive
- the Integrity Manager
- the Chair

and give at least 5 working days' notice of the proposed additional disclosure, to give HRNSW an opportunity to provide you with any further information regarding the investigation.

The conditions set out below involve important legal matters and HRNSW strongly advises that prior to considering any further disclosure, the discloser seeks legal advice.

The conditions which must be satisfied to make an additional disclosure are that:

- the discloser has reasonable grounds to believe that making a further disclosure of the information in accordance would be in the public interest; and
- after the 90 day period, the discloser gave HRNSW a written notification that:
  - includes sufficient information to identify the previous disclosure; and
  - states that the discloser intends to make a public interest disclosure; and
  - is made to at least 2 of the HRNSW officers described above; and
- the public interest disclosure is made, not less than five clear working days after the notification made to HRNSW, to:
  - a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
  - a journalist; and
- the extent of the information disclosed above is no greater than is necessary to inform that MP or journalist of the misconduct or the improper state of affairs or circumstances.

### **Emergency Disclosures**

After making the disclosure to HRNSW, there are also limited circumstances where an emergency disclosure may be made to an MP or a journalist, if the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment. However, additional conditions must be satisfied before making this disclosure, including prior written notification to HRNSW that the discloser proposes to make an emergency disclosure. This written notification should be made to at least two of the following officers:

- the Chief Executive

- the Integrity Manager
- the Chair

and give at least one working days' notice of the proposed additional disclosure, to give HRNSW an opportunity to provide you with any further information regarding the matter. This period of one working day may be waived by the discloser only if the relevant imminent danger could cause substantial harm during that period.

An emergency disclosure will usually be made only in exceptional circumstances. The conditions necessary for making such a disclosure involve important legal matters and HRNSW strongly advises that prior to considering any emergency disclosure, the discloser seeks legal advice.

The conditions required to make an emergency disclosure are that:

- the discloser has previously made a disclosure of the relevant information under this policy (**previous disclosure**); and
- the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and
- the discloser gives HRNSW a written notification that:
  - includes sufficient information to identify the previous disclosure; and
  - states that the discloser intends to make an emergency disclosure; and
  - is made to at least 2 of the HRNSW officers described above; and
- the emergency disclosure is made, not less than one clear working day after the notification made to HRNSW (unless that period can be waived for the reasons set out above), to:
  - a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
  - a journalist; and
- the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the MP or journalist of the substantial and imminent danger.

### **Protections for Whistleblowers**

Where a disclosure is made under this policy, HRNSW will put the following measures in place to protect the discloser:

- It will protect the identity of the discloser by implementing appropriate confidentiality measures, including restricting the persons to whom this information is provided.
- It will provide the information only to appropriate authorities, such as the Police, another State or Commonwealth authority or a legal practitioner in order to provide legal advice to HRNSW. Disclosure may also be made to another senior manager or a Board member of HRNSW who was not involved in the alleged misconduct. In each case, HRNSW will advise the recipient of the information that the discloser's identity is confidential.
- Other disclosures will be made only with the consent of the discloser.
- In providing information to other parties or investigating the matter, HRNSW will so far as is reasonably possible, seek to present information in a manner that the discloser's identity is protected. As an example, in order to investigate the matter, HRNSW may find it necessary to put the alleged matter to the alleged wrongdoer. Where that occurs, HRNSW will seek to present the information in a way that does not suggest that it was disclosed by the discloser. For example, and as an example only, the investigating officer might put the matter to the alleged wrongdoer by stating "A random audit of your email account has revealed that..."
- No contractual right or remedy, and no other form of proceeding, will be enforced against the discloser, providing the discloser has complied with this policy. This includes not taking any detrimental action against the discloser by reason of the whistleblowing disclosure, such as demotion, refusal of promotion or similar action. HRNSW will as necessary take reasonable measures to protect the discloser from retribution by the alleged wrongdoer or any other form of victimisation. For this purpose it is important that you advise HRNSW if you reasonably suspect that any retribution or victimisation is being taken against you.

### **HRNSW's Investigation Processes**

HRNSW will adopt the following investigative steps:

- It will take all disclosures made under this policy seriously.
- It will promptly investigate a disclosure made under this policy, in a manner that complies with the confidentiality obligations set out above, or where appropriate, promptly refer the matter to another authority. For example, an allegation of criminality might be referred to the Police, who have expertise in investigating those matters.

- Where HRNSW believes that some further disclosure of the discloser's identity is required, it will seek your consent before doing so.
- So far as is reasonably able to do so, HRNSW will advise you in general terms of the result of the investigation. Note that on occasions this might not be possible, for example because the investigation reveals information that cannot be disclosed to you.

### **Fair Treatment of all Concerned**

HRNSW will take reasonable steps to ensure the fair treatment of all employees that make disclosures under this policy. This includes the protections for disclosers outlined above.

In addition, HRNSW will, so far as is possible, seek to ensure the fair treatment of employees who are subject to an investigation following a disclosure. Typically, this will involve an objective investigation in which all relevant evidence is taken into account, including evidence that the alleged wrongdoer wishes to put forward to disprove the allegation. However, it will ultimately be a question of judgement as to how an investigation proceeds. For example, where the allegation relates to criminal conduct, the appropriate action may be to refer the matter to the Police, who will investigate the matter and take action in accordance with their own procedures. In other cases, procedural fairness may require that the alleged wrongdoer has an opportunity to put her or his case, prior to consideration of any possible disciplinary action.