

# MBA Group Whistleblower Policy

## 1. Introduction

Master Builders Association of the ACT is committed to adhering to its statutory obligations, its rules and values. We are committed to providing those involved with our Organisation a safe environment to raise breaches of internal rules or policy, or Disclosable Conduct to the Organisation, officers, employees or members. This commitment extends to entities which are controlled by the Master Builders Association of the ACT, namely MBA Group Training Limited.

This policy applies to the Master Builders Association of the ACT, MBA Group Training Limited and any of their subsidiary entities.

In cases where people feel they need to be protected in relation to raising a matter, this Policy outlines the protections that will apply. This Policy is available to all officers and employees.

## 2. Purpose

The purpose of this Policy is to:

- Provide you with an understanding of what can and should be reported under this Policy;
- Demonstrate the importance Master Builders Association of the ACT places on ensuring a safe and supporting environment where our people feel confident to raise breaches of internal rules or Disclosable Conduct relating to the organisation, its branches (if applicable), officers, employees or members;
- Assist to create a culture within Master Builders Association of the ACT that encourages our people to speak up and raise breaches of internal rules or policy, or Disclosable Conduct relating to the Organisation, its branches (if applicable), 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.

## 3. Scope

### 3.1. People

The following people can make a disclosure within 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;
- A person who is (or was) a supplier to, or has (or had) a transaction with, the Organisation or one of its branches (including volunteers);
- A person who is (or was) a supplier to, or has (or had) a transaction with, an officer or employer of the Organisation or one of its branches;
- An employee (or former employee) of a supplier or person who had such transaction;
- A relative or dependent of any of the above, or a dependent of the spouse of any of the above;
- An individual prescribed as being an eligible whistleblower; or
- A lawyer on behalf of a discloser in one of the above categories.

### 3.2 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 RO Act (including alleged reprisals for making a disclosure) as defined in Part 4 of this Policy (and also defined in section 6 of the RO Act).<sup>1</sup>

This Policy also relates to protections available to whistleblowers under the Corporations Act if they make a qualifying disclosure to an eligible recipient.

### 3.3 Complaints and Grievances

From time to time people 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 Human Resources Manual (employees) or the Client Services Charter (customers), or speak with your direct manager.

## 4. Defining Disclosable Conduct

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

- (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, such as 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.

Some examples include:

- Refusing membership of an organisation when eligible (section 166, RO Act);
- Using organisation's resources to favour one candidate over another in an organisation's election (section 190, RO Act);
- Breach of duties as an officer or employee in relation to financial matters (sections 285 to 288, RO Act);
- Coercion to exercise or not exercise a workplace right (section 343, FW Act);
- Adverse action due to membership / non-membership of an industrial association (section 346, FW Act);
- Breach of right of entry notice requirements (section 487, FW Act);
- Hindering or obstructing an entry permit holder (section 502, FW Act);
- Dishonest conduct by an employee or officer of an organisation or branch.

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<sup>1</sup> Disclosable Conduct can also be reported directly to the ROC at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).

## 5. 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, where that decision is not in contravention of one of the examples that would be Disclosable Conduct.

## 6. 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 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.

### 6.1 Who can report a matter?

As outlined in Part 3 of this Policy, all 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.

## 6.2 Who should I report my matter to?

If you do not wish to raise the matter with your immediate manager or the Chief Executive Officer, you should consider raising the matter with the Commercial Director, the Member Services Director or the President so they can assist you in relation to your matter. Again, there are alternate reporting mechanisms available.

### 6.2.1 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):

- Appoint a Whistleblower Protection Officer (the **WPO**) to provide support to the whistleblower;
- Be satisfied that action taken in response to the inquiry/investigation is appropriate to the circumstances;
- Ensure that all investigations are carried out in line with the principle of procedural fairness.

The WIO can be contacted through the channels below:

**Whistleblower Investigation Officer's Name:** Ashlee Berry

**Contact Details:** 02 6175 5900 / [aberry@mba.org.au](mailto:aberry@mba.org.au)

## 7. 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, locations, 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 action 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 Organisation determines that your matter should be investigated, the investigation may be conducted by the WIO, an appropriate capable officer or employee of the Organisation nominated by the WIO, or by an external investigator 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 the investigation, you may 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.

## **8. How you are protected**

### **8.1 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 the 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.

### **8.2 Protection**

Master Builders Association of the ACT 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 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.

### **8.3 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 3 of this Policy;
- Be about suspected Disclosable Conduct (as defined in Part 4 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 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.

### **8.4 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.

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 (section 377B(1)(a)); or

- The enforcement of any contractual or other right or remedy against them on the basis of their disclosure (section 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.

### 8.5 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.

## 9. Failure to comply with this Policy

Any breach of this Policy may result in disciplinary action, including dismissal from the Organisation.

## 10. Reporting Disclosable Conduct to an external agency

### Registered Organisation

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 Australian Building and Construction Commission (the **ABCC**) Commissioner, their Deputy or an inspector of the ABCC;
- 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.

### Charity

A qualifying disclosure involves reporting conduct by a charity or an officer or employee of the charity that represents misconduct, an improper state of affairs or circumstances, or breach of the law. This can include conduct that:

- Contravenes the Corporations Act, or the ASIC Act;
- Constitutes an offence against another Commonwealth law that is punishable by imprisonment for 12 months or more;
- Represents a danger to the public or the financial system; or
- Is prescribed by the Corporations Regulations 2001.

To qualify for protection, the whistleblower must have reasonable grounds to suspect that the information they will disclose indicates misconduct, and the disclosure must be made to an eligible recipient as follows:

- The Australian Securities and Investment Commission (ASIC);
- The Australian Prudential Regulatory Authority (APRA);
- A Commonwealth body nominated for this purpose in the Corporations Regulations 2001;
- A legal practitioner, if someone is seeking legal advice about whether the protections will apply to them;
- An officer or senior manager of the charity in question;
- An auditor or member of the audit team for the charity;
- An actuary of the charity;
- A person that the charity has authorised to receive a disclosure (which may include a person that is external to the charity).

## 11. Further Information

If you would like additional information about the rights of a whistleblower, making a disclosure or the process, you should speak with the Chief Executive Officer or the Whistleblower Investigation Officer.

Further information is also available via the following websites (please refer to the relevant entity website):

Registered Organisation: <https://www.roc.gov.au/whistleblowers>

Charity: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-protections-for-not-for-profit-organisations/>

## Appendix A – GLOSSARY OF TERMS

Fair Work (Registered Organisations) Act 2009	
<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 Member or an employee of the Fair Work Commission;</li> <li>• The Australian Building and Construction Commissioner;</li> <li>• A Deputy Australian Building and Construction Commissioner;</li> <li>• An Australian Building and Construction Inspector; or</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 <i>Fair Work (Registered Organisations) Act 2009</i> as follows:</p> <p><b>“Disclosable Conduct means an act or omission that:</b></p> <ul style="list-style-type: none"> <li>• <i>Contravenes, or may contravene, a provision of this Act, the Fair Work Act or the Competition and Consumer Act 2010; or</i></li> <li>• <i>constitutes, or may constitute, an offence against a law of the Commonwealth.”</i></li> </ul>
<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</li> <li>○ 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 or an employer association.</p>
<b>The RO Act</b>	<p>Means the Fair Work (Registered Organisations) Act 2009, as amended.</p>
<b>The ROC</b>	<p>Means the Registered Organisations Commission.</p>

Policy	
<b>Complaint about service</b>	<p>An officer, employee or member of our Organisation believes the Organisation:</p> <ul style="list-style-type: none"> <li>• supplied them with a level of service that the member believes to be unreasonable; or</li> <li>• failed to fulfill their consumer contractual obligations; or</li> <li>• has made a policy decision that they do not agree with.</li> </ul>
<b>Discloser (may also be called whistleblower)</b>	<p>A Discloser is a person who makes a disclosure relating to Disclosable Conduct under this Policy. A Discloser attracts protections detailed in the RO Act and this Policy.</p>
<b>Internal rules and policy</b>	<p>Refers to the powers and duties of officers in the Organisation which are provided in the Organisation’s rule book. The RO Act requires the rules of Organisations to provide for the powers and duties of committees and the officers (section 141(1)(b)(i)).</p>
<b>Matters</b>	<p>Refers to alleged contraventions of the internal rules, policies and Disclosable Conduct which are in scope of this Policy.</p>



<b>Organisation</b>	Means <b>Master Builders Association of the ACT</b> , and its branches and other structures that fall under the control of the <b>Master Builders Association of the ACT</b> (including MBA Group Training Limited).
<b>This Policy</b>	Means this Whistleblower Policy
<b>Whistleblower (may also be called discloser)</b>	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.
<b>Whistleblower Investigation Officer (WIO)</b>	A senior officer of the Organisation who is responsible for leading, coordinating or overseeing the investigation of matters in a fair, confidential, objective (without bias) and timely manner.
<b>Whistleblower Protection Officer (WPO)</b>	A senior officer of the Organisation who is responsible, as far is reasonable practicable, to protect any discloser who makes a report to the Organisation and is accountable for the provisions of this Policy.

