

ECH WHISTLEBLOWER MANAGEMENT PROCEDURE

JUNE 2022



WHISTLEBLOWER MANAGEMENT PROCEDURE

Table of Contents

1. Purpose	3
2. Scope	3
3. Definitions	3
4. Procedure	4
4.1. Reporting	4
4.2. Investigating a report	7
4.3. Making a false disclosure	7
4.4. Confidentiality and protection against victimisation	8
4.5. Education and awareness.....	8
5. Roles and Responsibilities	9
6. Related documents and Resources	10
7. Feedback	10
8. Document history	10

WHISTLEBLOWER MANAGEMENT PROCEDURE

1. Purpose

ECH is a charity and incorporated under the *Association Incorporation Act 1985 (SA)* and registered with the *Australian Charities and Not-for-Profit Commission (ACNC)*.

The purpose of this procedure is to outline the management and investigation of whistleblower reports received from an individual (a director, employee, contractor, supplier, volunteer or member of the public) who detects or has reasonable grounds for suspecting illegal and unethical conduct associated with ECH operations.

The processes defined are supported by the significant new whistleblower laws for the private sector that includes amendments to the *Corporations Act 2001* following the passing of the *Treasury Laws Amendment (Enhancing Whistleblower protections) Bill 2018*.

2. Scope

This procedure applies to all persons including, but not limited to employees, managers, and executive, volunteers and contractors, or members of the public including ECH consumers.

3. Definitions

Term	Definition
Detriment	Dismissal, injury or prejudice to an employee in their employment, harassment or intimidation, damage to a person's property, reputation or business
Disclosure	Report or disclosure made by a Whistleblower based on reasonable grounds that disclose or demonstrates an intention in good faith to disclose
Eligible Recipient – internal	To qualify for Whistleblower protection an eligible internal recipient is <ul style="list-style-type: none"> • An officer or senior manager of the charity in question • A person that the charity has authorised to receive a disclosure (this can include a person external to the charity) <i>Please note ECH's Nominated authorised officers</i>
Eligible Recipient – External	To qualify for Whistleblower protection an eligible external recipient is <ul style="list-style-type: none"> • The Australian Securities and Investment Commission (ASIC) • A legal practitioner, if someone is seeking legal advice about whether the protections will apply to them
Eligible Whistleblower	Any person who is or has been: <ul style="list-style-type: none"> • an officer or employee of ECH • an individual who supplies services or goods to ECH and their employees • an individual who is an associate of ECH • a relative or dependent of any of the above categories of persons
Nominated authorised officer	A person authorised to receive a disclosure that may qualify for protection (an eligible recipient). Authorised officers in ECH are the following. <ul style="list-style-type: none"> • Chief Executive • Chair, Audit and Risk Committee • Manager, People and Culture

WHISTLEBLOWER MANAGEMENT PROCEDURE

Term	Definition
In good faith	Means a disclosure must be honest and genuine, and motivated by wanting to disclose misconduct. A disclosure will not be 'in good faith' if you have any other secret or unrelated reason for making the disclosure.
Reasonable grounds	An objective test relates to whether a reasonable person in possession of information would form the belief that improper conduct has occurred. There is evidence to support a person's beliefs other than their concerns that may include documentation, witness or other direct evidence
Whistleblower	Is a person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within a private or public organisation

4. Procedure

Whistleblowers play an important role in helping organisations to identify, detect and prevent illegal, unethical activity. Procedures for the management and investigation of whistleblower reports are required under legislation and failure to comply with this requirement is a criminal offence.

Key elements of the new legislation include establishing a whistleblower protection regime for protecting individuals who make a report, allowing anonymous reports and expanding the types of reports or disclosures that will be protected under the legislation.

4.1. Reporting

To qualify for protection, a whistleblower must make their disclosure to an eligible recipient and the whistleblower must identify that the report is being made under the Whistleblower Policy.

Reports or disclosures can be made either verbally or in writing, with a preferred follow-up of a written version of the verbal disclosure. Whistleblowers should ensure their report is factually accurate, complete, without material omission and presented in an unbiased fashion as far as they are able.

The report should be as detailed as practicable and include (but not be limited to):

- the exact nature of the illegal or alleged misconduct believed to have occurred and when and where the alleged misconduct took place, if known
- who was involved in the alleged misconduct, and the names of witnesses who may know information that is relevant to investigating the alleged misconduct
- the nature and whereabouts of any further evidence that would substantiate the disclosure if known. It is important that evidence to support the matter is brought forward at this time as the absence of evidence may be taken into account in considering an investigation.

The Executive Assistant to the Chief Executive is authorised to receive written whistleblower reports or disclosures for the sole purpose of ensuring secure and confidential transmission of information.

WHISTLEBLOWER MANAGEMENT PROCEDURE

4.1.1 Illegal, unethical and improper conduct

Breaches of law and organisational policy, unethical behaviour and corrupt conduct relating to ECH operations include, but are not limited to:

- Practices endangering the health or safety of consumers, employees, volunteers or the general public and practices endangering the environment.
- Fraudulent activity i.e. failure to disclose conflict of interest
- Theft including theft of intellectual property, goods and supplies, and serious and substantial waste of the organisation's resources
- Improper use of consumers funds, goods and supplies
- Official misconduct
- Maladministration
- Harassment or unlawful discrimination
- Complaints regarding workplace health and safety should be made through the workplace health and safety procedures.

4.1.2 Internal reporting

It is considered important and best practice that individuals are able to report their concerns 24 hours a day, seven days a week given whistleblowing generally occurs out of normal working hours.

Individuals who detect or have reasonable grounds for suspecting illegal, unethical or improper conduct should make their report to an authorised officer who is an eligible recipient. In ECH the eligible recipients are the Chief Executive, Chair, Audit and Risk Management Committee or Manager, People and Culture. All whistleblower complaints should be referred to the Chair of the Audit and Risk Management Committee, where appropriate.

Contact	Email address
Chief Executive	cscapinello@ech.asn.au
Chair, Audit and Risk Management Committee	carmc@ech.asn.au
Manager, People and Culture	mmulvihill@ech.asn.au

WHISTLEBLOWER MANAGEMENT PROCEDURE

4.1.3 Reporting to an external organisation

Reports can also be made to the Australian Securities and Investments Commission (ASIC). ASIC has a guidance document for whistleblowers located on their web site at <https://www.asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/guidance-for-whistleblowers/>

An individual making a disclosure to ASIC must meet five criteria and do certain things when making a disclosure for them to be recognised and protected as a whistleblower. This is outlined in the guidance document.

An individual is not authorised in the ASIC guidelines or this procedure to report their concerns to commercial or social media and protection will not be provided to an individual who does so.

If a report is given to ACNC first, the whistleblower is not covered by whistleblower protection. Generally, if someone makes a disclosure about a charity to ASIC, ASIC will recommend the whistleblower also contact ACNC. ASIC may also release information to the ACNC itself. ASIC will generally obtain the consent of the whistleblower to do this.

Reports cannot be made using the South Australian whistleblower legislation (currently the *Whistleblowers Protection Act 1993* that is to be repealed and replaced with the *Public Interest Disclosure Act 2018* on 1 July 2019) as this legislation is specifically for reports relevant to the public sector.

4.1.4 Anonymity

A whistleblower can make a report anonymously and know that this will be honoured except where identification may be overridden by legislation.

Maintaining anonymity may make it difficult to investigate and substantiate a report and anonymity may be inconsistent with natural justice for the person or persons about whom the report is made. Anonymity may also mean that it is difficult to provide feedback to the whistleblower on the status of the investigation. The individual making the report is required to maintain confidentiality and refrain from discussing the matter with any unauthorised persons.

WHISTLEBLOWER MANAGEMENT PROCEDURE

4.2. Investigating a report

In the first instance, the nominated officer/s will consider the report. If the report meets the requirements under the legislation and ECH policy, an investigation will commence. The allegation will be dismissed if it is considered to have been made not in good faith and if it is considered trivial or fanciful. The person making the report will be notified of the nominated officer's decision.

All investigations will be conducted in a fair and independent manner and all reasonable efforts will be made to preserve confidentiality of the investigation.

Terms of reference will be established to clarify the issues to be investigated along with an investigation plan. Strict confidentiality and security of information will be maintained during the investigation. It may be considered necessary to ask an external investigator or expert to conduct or assist with the investigation.

The principles of natural justice will be observed. Where adverse comments about a person are likely to be included in a report, the person affected will be given the opportunity to comment and any comments will be considered before the concluding report is finalised.

The whistleblower will be kept informed of the progress and outcomes of the investigation, subject to privacy and confidentiality considerations.

4.2.1 Concluding the investigation

A report setting out the allegations, a summary of the findings and evidence relied on to determine the conclusions, the conclusions reached and recommendations based on the conclusions will be prepared and provided to the Board.

The whistleblower will be informed of the findings and relevant outcomes subject to considerations of privacy of those against whom the allegations are made. Relevant managers will be informed about the allegations and findings where appropriate. If the allegations are substantiated, the authorised officers may involve the People and Culture team to consider the appropriate next steps.

Any findings that relate to criminal activity will be reported to the police and/or regulators.

4.3. Making a false disclosure

An individual who makes a false report knowing it to be false may be subject to disciplinary action in accordance with ECH disciplinary procedures that may include dismissal.

WHISTLEBLOWER MANAGEMENT PROCEDURE

4.4. Confidentiality and protection against victimisation

ECH will take all reasonable steps to protect, support and respect the rights of a person who in good faith reports alleged improper behaviour. Retaliation action or threats of retaliation action against any person who has made or who is believed to have made a report will not be tolerated. Any such retaliatory action or victimisation by any employee or other individual will be treated as serious misconduct and will result in disciplinary action that may include dismissal.

A Whistleblower who considers themselves at risk of retaliation can ask the authorised officers to work with them to take appropriate action. This may not be possible if the whistleblower wishes to remain anonymous and the whistleblower will be told why their requests cannot be met.

A Whistleblower who considers they have been retaliated against or is concerned about how the policy and procedure has been applied to their disclosure, should raise this with the authorised officer. The officer will take action as they consider appropriate and may recommend that the concerns are investigated. A whistleblower who considers that the authorised officer has not adequately resolved their concerns can escalate such concerns to the Chief Executive or Chair of the Board.

4.5. Education and awareness

Nominated officers who have responsibilities under a whistleblower program such as receiving and investigating disclosures will receive education and training in how to effectively manage the program and meet their legal obligations.

Boards and senior executives should also be provided with training on the importance and requirements of a whistleblower program.

Further, all staff should be made aware of the whistleblower program through organisation-wide awareness, including how to make a disclosure and the rights and process and protections that will apply to protected disclosures

Information will be provided to consumers, volunteers, contractors and suppliers.

WHISTLEBLOWER MANAGEMENT PROCEDURE

5. Roles and Responsibilities

Nominated authorised officers / Whistleblower protection officer/s

- Responsible for coordinating an investigation into any report or disclosure received from a whistleblower.
- Responsible for documenting and handling all matters in relation to the report and investigation and finalising the investigation that includes determining outcomes and follow-up action

Board of Directors

- Responsible for adopting the policy and nominating the whistleblower authorised officers

Chief Executive

- Responsible for implementing the Whistleblower Management Policy and Procedure and for receiving confidential reports following the investigation

Executive Assistant to Chief Executive

- Authorised to receive written whistleblower reports via mail when they are addressed to the Chief Executive.
- Ensures the document is kept secure and confidential and will hand the document to the intended recipient personally.

Directors, Executive, managers, employees and volunteers

- Responsible for reporting breaches of the law, organisation policy or generally recognised principles of ethics to a person authorised to take action on such breaches

ECH consumers and members of the public

- Have the right to make a report at any time

WHISTLEBLOWER MANAGEMENT PROCEDURE

6. Related documents and Resources

6.2. External

- *Treasury Laws Amendment (Enhancing Whistleblower protections) Bill 2018*
- *Corporations Act 2001*
- *Whistleblowing at Your Not-for-profit: A leader's guide. Our Community and Your Call. June 2017*

6.3. Internal

- Whistleblower Management Board Policy

7. Feedback

Contact the Quality and Compliance department with feedback on this document at: qcinbox@ech.asn.au. Feedback includes but is not limited to broken hyperlinks, updated processes and additional related documentation and resources.