

## Whistleblower Policy

<b>Policy Title</b>	<b>Whistleblower Policy</b>
<b>Policy Number</b>	<b>CEO011</b>
<b>Department</b>	<b>CEO, Habitat for Humanity Australia</b>
<b>Version</b>	<b>1.0</b>
<b>Authorised By</b>	<b>Board of Directors/ sub-committee</b>
<b>Reviewed</b>	<b>October 2021</b>
<b>Re-ratified</b>	<b>29 November 2021</b>

### Whistleblowing

#### 1. Purpose of this policy

In Australia, the *Corporations Act 2001* (Cth) (Corporations Act) provides for protection of whistleblowers (**Whistleblower Regime**). Disclosures made on or after 1 July 2019 in accordance with the requirements of the Whistleblower Regime are called "protected disclosures".

A "protected disclosure" made under the Whistleblower Regime is a disclosure:

- (a) made by an "eligible whistleblower"; and
- (b) about a disclosable matter; and
- (c) made directly to a person who is eligible to receive a protected disclosure.

A person who makes a disclosure that meets all of these requirements, will qualify for protection under the Whistleblower Regime. This is the case even if the disclosure later turns out to be incorrect.

HFHA is committed to the highest principles of legal, ethical and values-based behaviour. HFHA encourages staff, volunteers, contractors, partners and stakeholders who have experienced or have knowledge of or suspect wrong-doing in any of HFHA activities to report the alleged wrong-doing under this Policy that guarantees protection and support for bona fide whistleblowers. Staff and volunteers will receive training at induction and at regular intervals on this Whistleblowing Policy. This Policy will also be made available on the HFHA website for reference by any person who wishes to avail themselves of the protection, processes and outcomes available under the Policy, including employees and officers of HFHA. The Policy will be promoted to all stakeholders through the HFHA website, partner agreements, project information briefs, and project briefings.

The aims of this policy are:

- to encourage staff to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate, and that their confidentiality will be respected;

- to provide staff with guidance as to how to raise those concerns;
- to provide transparency around HFHA's framework for receiving, handling and investigating disclosures;
- to support the HFHA's values and code of conduct; and
- to meet HFHA's legal and regulatory obligations.

All HFHA staff, volunteers, contractors and partners have an obligation to report wrongful acts or suspected wrongful acts and have the right to speak freely and honestly to report wrongful acts in a safe environment without fear of retaliation, retribution or reprisal. HFHA will respond in a timely, respectful and confidential manner to all disclosures of wrongful acts and will take steps to protect its personnel and stakeholders from detrimental treatment or dismissal if they report actual or suspected wrongful acts in good faith. While protection is provided to whistleblowers, deliberate false reports are considered equally unacceptable and anyone found making a deliberate false claim or report will be subjected to disciplinary action.

HFHA is committed to protecting the confidentiality and rights of a person who reports wrong-doing unless they provide a written consent for disclosure, or disclosure is required by law. HFHA will also protect the confidentiality and rights of the person/s accused of wrong-doing while the matter is appropriately investigated and resolved. All allegations will be handled confidentially, impartially and in a sympathetic manner.

This Policy does not form part of any employee's contract of employment.

## 2. Who can make a protected disclosure?

An "eligible whistleblower" is someone who is, or has previously been:

- (a) an officer of HFHA;
- (b) an employee of HFHA;
- (c) a person who supplies goods or services to HFHA, and employees of those suppliers, including volunteers of HFHA;
- (d) an individual associate of HFHA; or
- (e) a relative, dependant, or spouse of a dependant of any of the above individuals.

## 3. What is a disclosable matter?

Information is a "disclosable matter" under the Corporations Act if the eligible whistleblower has reasonable grounds to suspect that the information disclosed:

- (a) concerns misconduct or an improper state of affairs or circumstances in relation to HFHA. Misconduct includes fraud, negligence, default, breach of trust and breach of duty. Conduct does not necessarily need to be "unlawful" to fall within the scope of "misconduct or an improper state of affairs or circumstances", and may include:
  - I. systemic improper conduct within HFHA that is causing, or may cause, harm;
  - II. conduct that indicates a significant risk to public safety or the financial system;
  - III. conduct that is not in the interests of the public; and
  - IV. unsafe work practices and other significant safety concerns; or
- (b) indicates that HFHA or any employee, volunteer or officer has engaged in conduct that:
  - I. constitutes a contravention of specific legislation, including the Corporations Act; or
  - II. constitutes an offence against any other law of the Commonwealth that is punishable by at least 12 months' imprisonment; or
  - III. represents a danger to the public or the financial system.

This Policy does not apply to a complaint about a service or a personal work grievance which is covered by the Complaints

Policy and the Staff Grievance/Dispute Resolution Process outlined in this Handbook, unless the grievance includes victimisation due to whistleblowing, falls within (b) above, or the disclosure is made to a legal practitioner in order to obtain legal advice or legal representation in relation to the Whistleblower Regime.

#### 4. Who can receive a disclosure?

Staff, volunteers, contractors, partners and stakeholders can make a protected disclosure by contacting the HFHA Company Secretary, who is authorised to receive a protected disclosure. All reports are received via secure and confidential channels and can be contacted as follows:

**Email:** [companysecretary@habitat.org.au](mailto:companysecretary@habitat.org.au)

Alternatively, staff, volunteers, contractors, partners and stakeholders may raise their concerns verbally or in writing with their immediate manager or Project Supervisor, or, if not comfortable with doing so, directly with the CEO or a member of the HFHA Board. The statement should include full details of the allegation or complaint together with any supporting evidence that may be available. Evidence may include date, time, location, persons involved, names of witnesses, evidence or documentation of the events. HFHA takes all protected disclosures seriously and encourages its employees and others to raise their concerns directly with an eligible recipient of HFHA as outlined above. This will enable HFHA to address any wrongdoing as early as possible.

An eligible whistleblower may also make a protected disclosure to:

- (a) the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) or a prescribed Commonwealth authority.
- (b) a legal practitioner in order to obtain legal advice or legal representation in relation to the Whistleblower Regime; and
- (c) in limited circumstances, a journalist or member of Parliament. This would need to meet the strict criteria set out under the Corporations Act. We recommend that you contact an independent legal adviser if you wish to obtain further information regarding the strict criteria for making a protected disclosure to a journalist or member of Parliament.

#### 5. How may disclosures be made?

There is no requirement for disclosures to be made in a particular form. Disclosures may be made in writing (e.g. via email), in person or via telephone.

Disclosures can be made anonymously and still be protected under the Corporations Act, such as by contacting the HFHA Company Secretary with the contact details set out in Section 4 above. The person or persons raising their concerns will be asked whether they wish for their identity to be kept confidential and whether they are seeking the protection offered by this Whistleblowing Policy.

A discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised. A discloser can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations.

However, anonymous disclosures may not be dealt with as effectively as direct reports to an eligible recipient within HFHA, as HFHA may not be able to obtain additional information from an anonymous whistleblower. All whistleblowers who disclose their identity while making a protected disclosure will be afforded confidentiality protections in respect to their identity as outlined in the next Section.

## 6. Protections available to whistleblowers in Australia

### Confidentiality

Strict confidentiality obligations apply in relation to any protected disclosures. The identity or any information that may lead to the identification of the whistleblower (**Confidential Identity Information**) will not be disclosed by HFHA unless HFHA is authorised to do so under the Australian Whistleblower Regime.

A disclosure of Confidential Identity Information is authorised under the Australian Whistleblower Regime if:

- (a) the disclosure is made with the consent of the whistleblower; or
- (b) the disclosure is made to:
  - (i) ASIC, APRA or a member of the Australian Federal Police (**AFP**); or
  - (ii) a legal practitioner for the purposes of obtaining advice or legal representation in relation to the operation of the Australian Whistleblower Regime; or
  - (iii) a body prescribed by the regulations; or
- (c) all of the following applies to the disclosure:
  - (i) the disclosure does not disclose the whistleblower's identity but discloses information that may lead to the identification of the whistleblower; and
  - (ii) is reasonably necessary for the purpose of investigating the disclosure; and
  - (iii) all reasonable steps are taken to reduce the risk that the whistleblower will be identified.

### Protection from legal action

Eligible whistleblowers who make a protected disclosure under the Australian Whistleblower Regime are protected from certain legal action taken by HFHA or any individuals for making a protected disclosure, including:

- (a) civil, criminal, and administrative (including disciplinary) action against the whistleblower; and
- (b) contractual action, including termination of a contract on the basis that making a disclosure is a breach of that contract.

Any information that is disclosed as part of a protected disclosure to ASIC, APRA or a prescribed Commonwealth authority will not be admissible in evidence against the whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, except for proceedings in respect of the falsity of the information.

However, it is important to note that making a report may not protect the whistleblower from the consequences flowing from involvement in the wrong-doing itself. A person's liability for their own conduct is not affected by their reporting of

that conduct, however active cooperation in the investigation, an admission and remorse may be taken into account when considering any disciplinary action.

It is also unlawful for a person to:

- (a) engage in any conduct that causes any detriment; or
- (b) make a threat to cause any detriment,

to a whistleblower or another person because the person engaging in the conduct believes or suspects that the other person or a third person made, may have made, proposes to make, or could make, a protected disclosure.

### **Protection from detrimental acts or threats**

The Australian Whistleblower Regime makes it unlawful for a person to:

- (a) engage in conduct that causes any detriment to a whistleblower or another person because the person engaging in the conduct believes or suspects that the other person or a third person made, may have made, proposes to make, or could make, a protected disclosure; or
- (b) make a threat (whether express or implied, conditional or unconditional, intentional or reckless) to cause any detriment to a whistleblower or another person because the whistleblower or another person has made, or may make, a protected disclosure.

"Detriment" is defined broadly under the Australian Whistleblower Regime and includes dismissal, disciplinary action, injuring an employee in their employment, altering their position or duties to their disadvantage, threats, harassment, discrimination, damage to a person's property, reputation, business or financial position, and any other damage to a person. Penalties apply for engaging in any of the conduct referred to above. Any person involved in the contravention may be found liable.

If a person suffers detriment or is threatened detriment by another person's conduct that is in contravention of the Australian Whistleblower Regime, the person may apply to the court for an order of compensation or another remedy against those involved.

### **Compensation and remedies**

Courts are given broad scope to make orders if satisfied detrimental conduct has occurred or been threatened. Courts may order compensation (against the individual involved and their employer), injunctions, apologies, reinstatement, exemplary damages, or any other order the court thinks appropriate.

## **7. How HFHA will investigate disclosures**

The following is a guide to the steps that will be followed to investigate and resolve an alleged wrong-doing complaint. The processes may be followed, varied or otherwise applied as may be determined by HFHA in its absolute discretion having regard to the circumstances of the matter.

HFHA takes all protected disclosures seriously and, where appropriate, will investigate protected disclosures that are reported to an eligible recipient within HFHA.

Raising concerns or reporting wrongdoing can be undertaken in accordance with the Staff Grievance/Dispute Resolution Procedures outlined in this Handbook. Alternatively, reporting a wrongful act or unethical behaviour can be raised anonymously using the Habitat for Humanity International Ethics and Accountability line which Habitat for Humanity uses to manage anonymous disclosures by any stakeholder.

The CEO and the Board Chair or the Chair of the Finance, Audit and Risk Committee (**FAC**) will examine the issue and make preliminary enquiries to decide whether a full investigation will be necessary. If such an investigation is necessary then, depending on the nature of the disclosable matter, HFHA will nominate an investigating officer to obtain all the facts including detailed information from both the whistleblower and the respondent/s. The investigating officer may:

- (a) be appointed from inside HFHA but independent of the unit being investigated; or
- (b) be appointed from outside HFHA where appropriate.

The investigating officer will obtain the facts and liaise directly with the CEO/Board Chair/Chair FAC as appropriate. The investigating officer will:

- undertake the investigation in a timely manner;
- maintain confidentiality and security of all documents, reports, notes;
- have unfettered access to HFHA records and documents;
- have access to independent legal and financial advice if necessary;
- have access to the whistleblower and keep the whistleblower informed;
- interview witnesses, ensuring confidentiality;
- document any meetings, discussions, or other communications;
- identify whether on balance the alleged wrongdoing did or did not occur;
- identify whether the matter(s) alleged by the whistleblower are serious enough to warrant disciplinary action or reporting the matter to law enforcement authorities;
- recommend possible options to the CEO/Board Chair/Chair FAC as appropriate for resolution.

HFHA will conduct any investigations objectively and fairly, with proper records maintained of any interviews, discussions, fact finding and conclusions related to the investigation and the outcome (including any remedial or preventative action to be taken).

Directors, officers and employees are required to cooperate and participate in an investigation into a protected disclosure, if requested.

HFHA will aim to keep the whistleblower informed of the progress of the investigation and its expected timescale. However, confidentiality requirements may prevent HFHA from providing specific details of the investigation or any disciplinary action taken as a result. All staff should treat any information about the investigation as confidential.

## 8. Taking Action

The CEO and/or the Board of HFHA will consider any report and recommendations by the investigating officer and take the action it believes is appropriate in the circumstances:

1. If the allegations are proven, the response may include disciplinary action (including termination of employment). It may also include mediation, an apology, or education and training or amending HFHA

procedures (or any combination of these). The CEO or Board of HFHA will communicate the resolution to all parties involved and set a review date to follow up with the whistleblower to ensure the solution is working satisfactorily and the wrongdoing has stopped.

2. If the allegations are proven to not have occurred:
  - no action will be taken against the respondent/s; and
  - no action will be taken against the whistleblower, unless it can be proven that the allegations were made maliciously or vexatiously.
3. If the investigating officer is unable to decide whether the alleged events occurred, notes will be kept on file in a secure environment and no disciplinary action will be taken against any person. However, mediation or changes to procedures or education and training may still take place.

The CEO and the Board will consider making the outcomes of the inquiry available to all stakeholders consistent with HFHA policy and the principles of operating transparently and with good governance.

#### **9. Support for whistleblowers**

HFHA is committed to ensuring all personnel feel supported and able to raise issues which relate to any misconduct or improper state of affairs or circumstances within HFHA.

Where a protected disclosure is made, HFHA will reiterate the requirements of this Policy and the Australian Whistleblower Regime with any person concerned in the investigation of the disclosure.

As stated above, HFHA will conduct investigations into protected disclosures in a manner which is fair in all of the circumstances and will have regard to the protections afforded to the whistleblower and the privacy and fair treatment of persons referred to in the disclosure, including those to whom the disclosure relates.

HFHA will determine whether any disciplinary outcomes or other remedies are appropriate after an investigation into a protected disclosure is completed.

After an investigation is concluded, HFHA will monitor the whistleblower for a reasonable period of time, where possible, to ensure that the whistleblower is not being treated unfairly or otherwise being subject to detrimental treatment as a result of making a protected disclosure.

If a whistleblower notifies of any alleged unfair or other detrimental treatment, HFHA will take appropriate steps to respond to the allegations.

#### **10. Fair Treatment**

The HFHA will not tolerate any reprisals or threats of reprisals made against whistleblowers and will take appropriate steps to protect whistleblowers from such retaliation.

It is important that all investigations into protected disclosures are conducted in a procedurally fair and confidential manner, to ensure the fair treatment of any individuals named in the protected disclosure or to whom the protected disclosure relates.



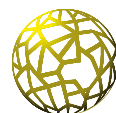
We build **strength, stability, and self-reliance** *through shelter.*

No action will be taken against any individual implicated in a protected disclosure until an investigation has determined whether any allegations against them are substantiated. However, if appropriate, an implicated employee or officer may be temporarily stood down on full pay pending the outcome of the investigation.

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