

WHISTLEBLOWING AND COMPLAINTS POLICY FOR THE C&G DIVISION

Introduction from Mark Irving, Administrator

Every institution is susceptible to corruption, wrongful and criminal behaviour, including unions.

The purpose of every union is to advocate for the industrial rights of its members. In the pursuit of that purpose, history has shown us that unions can be open to corruption and criminal behaviour, as well as workplace behaviour that impacts on employees' rights to a safe work environment.

There is a history in the construction industry of blowback on those who want to take on corruption, criminal behaviour and wrongdoing.

The new laws that put the union into administration ensure that people wanting to disclose information will be protected. This policy outlines those protections.

This whistleblower policy is underpinned by fundamental principles:

- Unions should be free of corrupt, menacing, and criminal conduct.
- Union members and workers should also be free from corrupt, menacing, or criminal conduct by their employer, and should not be exposed to such conduct in the workplace.
- People who have witnessed wrongdoing should feel safe to report it free of any fear of retaliation. This fundamental right applies to union members and all others in the construction industry.
- Wrongdoing in the construction industry is not limited to conduct by union officials, employees and members. It includes behaviour by employers, builders, sub-contractors, and other industry participants, such as mediators.
- This policy allows complaints to be made by anyone about wrongdoing anywhere in the industry.

The policy is supported by a secure whistleblowing website. Those who make complaints have the option of remaining anonymous.

The CFMEU will be stronger if it is resilient to corruption and has robust processes that ensure people feel safe to report wrongdoing free from intimidation.

This policy and the processes that support it will assist the Administration and leave the union stronger and more able to deliver on its purpose.

Mark Irving

Purpose and scope of policy

The purpose of this policy is to empower individuals involved in the construction industry to feel safe to speak up and make complaints about corrupt, menacing, improper, unlawful or criminal conduct by industry and union participants.

In order for the union to function effectively, it is necessary to:

- identify serious forms of wrongdoing;
- ensure that complainants are protected from retaliation by the union; and
- address serious forms of wrongdoing.

A priority of the Administrator has been to establish a complaints procedure to ensure that wrongdoing can be identified and addressed, and to provide assurances about and identify legal protections against retaliation.

This policy sets out the framework for the operation of this complaints procedure, including the process for making a complaint and rights and protections for those who make complaints.

What kinds of complaints are covered by this policy?

A person may make a complaint about conduct that is, or is alleged to be:

- corrupt;
- improper;
- menacing; and/or
- unlawful or criminal (including sexual harassment).

Such conduct must have been engaged in by current or former:

- industry participants, including employers in the industry and their employees, suppliers, contractors, et cetera;
- union officers, employees, organisers, and delegates;
- employees of employers in the industry, whether union members or not.

What this policy does not cover

Most personal and industrial complaints and disputes fall outside the scope of this policy and will continue to be dealt with by delegates and organisers in the usual way.

These may include:

- failures by the employer to pay legal entitlements or uphold conditions;
- interpersonal disputes at the workplace; and
- industrial disputes such as unfair dismissal or disciplinary proceedings.

However, there may be some circumstances where there is an overlap between conduct covered by this policy and a personal work-related grievance. If in doubt, a person can make a complaint.

Who can make a complaint under this policy?

Any person with information about corrupt, improper, menacing or unlawful/criminal conduct can make a complaint. This includes, for example:

- employees in the construction industry about conduct by their employer;
- delegates in the construction industry about conduct by of their employer;
- delegates in the construction industry about organised crime and outlaw motorcycle group members engaged as 'mediators' by their employer, or a builder or sub-contractor, or by employer groups;
- employees about conduct by their delegate or other union representative;
- employers about conduct by union delegates;
- union employees (such as organisers and admin staff) against employers in the industry, officers (including former officers) and their own employer.

Protection of complainants

The Administrator has a zero-tolerance policy for retaliatory or adverse action taken against complainants because they have made a complaint.

The law offers protections for whistleblowers, and the Administrator will use all legal instruments to support and protect people who wish to make complaints.

Disclosable conduct

The new laws that put the CFMEU and its branches into administration are designed to ensure that people wanting disclose certain information are protected.

Disclosable conduct is defined in the new provisions of the *Fair Work Act (Registered Organisations) Act 2009* (Cth) (**the Act**) as conduct that is or is alleged to be improper, unlawful or criminal, and has been engaged in by current or former CFMEU officers, employees, organisers, delegates, shop stewards or members.

All complaints about disclosable conduct are **protected disclosures** under the Act and are therefore covered by whistleblower protections in Part 4A of the Act.

This means that there are remedies available if a complainant suffers any detriment for making a complaint about disclosable conduct.

Complainants are also protected from civil or criminal liability for making a complaint which is a protected disclosure. This means that you are immune from being charged with a crime, or for civil action being taken against you, as a result of your complaint.

Conduct that is not defined as 'disclosable conduct'

Complaints about conduct that is not disclosable conduct under the new provisions may still be covered under Part 4A of the Act, and therefore attract the same whistleblower protections.

This includes complaints about acts or omissions by the union, or an officer or employee of the union or one of its branches, that a complainant reasonably suspects:

- contravene, or may contravene, a provision of the Act, the *Fair Work Act 2009* (Cth) or the *Competition and Consumer Act 2010* (Cth); and/or
- constitutes or may constitute an offence against a Commonwealth law.

The person making the complaint/disclosure that is covered by whistleblower protections must be:

- a current or former officer of an organisation, or of a branch of an organisation (such as the union);
- an employee or former employee of an organisation, or of a branch of an organisation;
- a member or former member of an organisation, or of a branch of an organisation;
- a person who has or had a contract for the supply of services or goods to, or any other transaction with, an organisation or a branch of an organisation (or one of their current or former officers or employees); and/or
- a person who has or had a contract for the supply of services or goods to, or any other transaction with, an officer or employee of an organisation or of a branch of an organisation

who is or was acting on behalf of the organisation or branch (or one of their current or former officers or employees).

Other protections

Complainants under this policy may also be protected under the general protections provisions of the *Fair Work Act*. Under these provisions, it is unlawful for a person to take adverse action against another person for, among other things, engaging in industrial activities seeking to resist undue influence or pressure in negotiating individual arrangements.

If a complainant suffers retaliation or adverse action for making a complaint, how will this be remedied?

Immediate disciplinary action may be taken by the Administrator in relation to any retaliatory adverse action taken by a union employee against a complainant for making a complaint (which may include, in the case of any union employee, immediate termination of employment for serious misconduct).

It is unlawful and a criminal offence to cause detriment to or take a reprisal against a person because they make a complaint. The law protects complainants from detriment or reprisals such as:

- losing your job or rights at work;
- being demoted or put in a worse position at work;
- being discriminated against at work;
- being harassed or intimidated;
- suffering physical or psychological harm; and
- damage to your property or reputation.

If someone takes or threatens to take a reprisal against a complainant for making a complaint, they can be charged with a criminal offence.

A court can also make various orders against someone who takes or threatens to take a reprisal against a complainant to prevent, stop or remedy the effects of the reprisal or threat.

Confidentiality and making anonymous complaints

Confidential process and right to anonymity

The Administrator has established an Integrity Unit.

The Integrity Unit will securely store reports and put in place appropriate information barriers.

Complaints will be received by lawfully authorised recipients. This includes the Administrator and persons the Administrator has authorised in writing to receive complaints.

Complainants will have the option to remain anonymous when making a complaint (see '**The Complaints Process**' below).

If you make a complaint about **disclosable conduct** under this policy, your confidentiality is legally protected. Authorised recipients will not disclose or share your identity with anyone who isn't an authorised recipient, including law enforcement or other agencies, **unless** you consent to this happening **or** it is already public knowledge that you have made the complaint (for example, if you have spoken to the media about your complaint).

Complaints about conduct other than disclosable conduct

The Administrator will ensure that complaints about conduct other than disclosable conduct made under this policy are treated confidentially. However, your identity or details of your complaint **may be** disclosed if:

- disclosure is authorised by a complainant;
- disclosure is made to an Australian lawyer for the purpose of obtaining legal advice in relation to the report;
- disclosure is required, or authorised, by law;
- disclosure is required to protect the health and safety of persons; or
- disclosure does not reveal the identity of the reporter and it is reasonably necessary in order to investigate the issues in the complaint.

Referrals to regulators or law enforcement agencies

If appropriate and lawful, an authorised recipient may refer a complaint to a regulator (such as the Fair Work Commission or Fair Work Ombudsman) or a law enforcement agency for investigation.

An authorised recipient will only disclose a complainant's identity to a regulator or agency in accordance with the confidentiality rights described in the previous section.

The complaints process

Making a complaint

The Administrator has established a secure and dedicated platform for complaints.

This platform, Elker, can guarantee anonymity, and allows for the safe and secure upload of information, including video.

Further means of making complaints are in development.

What happens next?

Complaints will be managed by the Integrity Unit.

Confidentiality will be maintained in accordance with this policy.

The complaint will be reviewed by an authorised recipient in the Integrity Unit.

The first step is to decide whether the complaint falls within the scope of the policy.

The next steps may include:

- commencing an investigation, which is dealt with below;
- making a referral to a welfare service; and
- referring matters to other authorities, if authorised to do so.

Investigation phase

If the complaint is to be investigated, the authorised recipient will seek to ascertain the relevant facts in a fair and impartial manner. The investigator will usually be an Australian lawyer.

The outcome of the investigation will be reported to the Administrator. Where allegations are substantiated, steps will be taken to address the conduct. This could include disciplinary action against an employee, ordering employees to stop the conduct, and/or disciplinary charges under the Rules of the Union.

Complaints to external bodies

External bodies may also receive disclosures regarding conduct described in this policy. These bodies include the General Manager of the Fair Work Commission and the Fair Work Ombudsman:

Fair Work Commission

Mail: GPO Box 1994,

Melbourne VIC 3001

<https://www.fwc.gov.au/reportcfmeu>

regorgs@fwc.gov.au

1300 341 665

Fair Work Ombudsman

GPO Box 9887

[Contact us – Fair Work Ombudsman](#)

[Send us an anonymous tip-off – Fair Work Ombudsman](#)

Disclosures made to the Fair Work Commission and the Fair Work Ombudsman are covered by the whistleblower protections under Part 4A of the Act (see **‘Protections of complainants – Conduct that is not defined as ‘disclosable conduct’**’). Complaints that fall under that section and are made to a complainant’s lawyer are also covered by those protections.

Updates to the policy

This policy has been created on an urgent basis in the first days of the Administration. It is a first step towards providing a process for making complaints free of fear of retaliation.

The Administrator is in the process of reviewing this policy to ensure that it complies with established International standards (AS ISO 37002:2023, Whistleblowing management systems — Guidelines; AS 8001:2021, Fraud and corruption control; ISO 37001, Anti-bribery management systems) and it will be amended as necessary.