

# Managing risk of reprisals and conflict

## 1. Objectives

- To outline a process for organisations to identify, assess, control and monitor the risks of reprisals faced by an internal reporter and any related workplace conflict.

## 2. Why is this important?

Staff who report wrongdoing are likely to find the experience stressful. They may also suffer detrimental action in reprisal for reporting. All organisations have an obligation to manage the risk of reprisals against an internal reporter and any related workplace conflict.

To deal with these situations effectively, organisations need to identify risks early and implement appropriate prevention or containment strategies. Accurate and objective assessments of risk allow organisations to properly defend themselves against any future allegations of having mismanaged internal reporters.

Consulting with internal reporters about the sources and levels of risk from when they first make their report is crucial. This helps to manage the internal reporter's expectations about how others might perceive their report and reduces the potential for conflict – including conflict with management about whether effective support was provided.<sup>1</sup>

The *Whistling While They Work* research found that:

- A substantial minority (22%) of public sector reporters of wrongdoing believed that they were mistreated as a result. The most common reprisals reported were threats, intimidation, harassment or torment, undermining of authority, heavier scrutiny of work, ostracism, questioning of motives, unsafe or humiliating work and being made to work with wrongdoers.
- Most organisations have no systematic methods in place for ensuring that – when staff report wrongdoing – assessments are made as to what, if any, risks of reprisal or mistreatment exist.<sup>2</sup>

## 3. Legal and management obligations

### 3.1 Work health and safety and duty of care requirements

Reporting wrongdoing can be a difficult process and, if not properly managed, can result in stressful interactions with colleagues and managers. Stress is a legitimate and serious workplace concern and may result in a staff member sustaining a serious injury.

The *Work Health and Safety Act 2011* states that a person conducting a business or undertaking – which includes public sector departments, authorities and councils – has a primary duty of care to ensure the health and safety of workers and others. An organisation can fulfil this obligation by doing what they reasonably can in the circumstances to manage health and safety risks. All officers who can make decisions that significantly affect their organisation must exercise due diligence to ensure compliance. Failure to comply with health and safety duties is a serious offence that attracts significant penalties (ss.31-33).

Organisations also have a duty of care under common law to provide a safe workplace for their staff. This means that managers and supervisors are responsible for taking all reasonable steps to prevent inappropriate behaviour at work – which includes harassment, bullying, discrimination and victimisation. Organisations have been successfully sued for compensation for breaching this duty of care where the staff member has become ill or suffered injury – physically or psychologically – as a result.

## 4. What does this mean for your organisation?

### 4.1 Managing risks

Your organisation should develop a process – based on a risk assessment – to determine the level of protection and support that is appropriate for an internal reporter. This should include identifying and assessing direct risks of detrimental action in reprisal for reporting wrongdoing ('reprisals'), as well as indirect but related sources of workplace conflict or difficulties.

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This process should be completed as soon as possible after a report of wrongdoing is made internally, or a report is made externally and you are notified. This gives your organisation the best chance of recognising any risk of reprisals or related workplace conflict and preventing or containing problems. The process should not be done as an afterthought when problems emerge or at the request of the internal reporter.

Your organisation should identify who is responsible for undertaking the risk assessment. Some common approaches include:

- Disclosures officers conducting a preliminary assessment based on a checklist of risk factors and then sending this to the disclosures coordinator for review or a more comprehensive risk analysis.
- The disclosures coordinator conducting all risk assessments.

Those in the workplace involved – including the internal reporter and their manager – are the best sources of information for the risk assessment. However risk assessment processes, by their very nature, require a degree of skill and experience. Who is responsible is a decision for your organisation, depending on any existing risk management structures and the skills of disclosures officers and coordinators.

## 4.2 Risk management process

The risk management process involves:

- Identifying – are reprisals or related workplace conflict problems, or do they have the potential to be problems in the workplace?
- Assessing – what is the likelihood and consequence of reprisals or related workplace conflict occurring?
- Controlling – what strategies should be implemented to prevent or contain reprisals or related workplace conflict?
- Monitoring and reviewing – have the strategies been implemented and were they effective in preventing or containing reprisals or related workplace conflict?

### a) Identifying risks

Risk identification involves determining the specific behaviour and circumstances that may result in reprisals or related workplace conflict.

Your organisation should develop its own list of risk factors that can alert disclosures coordinators, disclosures officers and managers to the key problems. The indicators listed in Table 1 are suggestions only. Take into account your organisational context – and, over time, your experience with reports – when considering when and where reprisals or related workplace conflict are likely to occur.

The person doing the risk assessment should clearly define the individual factors affecting the reporter (both organisational and personal) that could influence the chances of risks materialising. They should consider the specific workplace, the work required and organisational procedures when determining if there are factors in the workplace that make it likely that reprisals or related workplace conflict will occur.

### b) Assessing risks

You should then assess the level of risk of reprisals or related workplace conflict by considering:

- The likelihood of reprisals or related workplace conflict occurring – this may be high if:
  - › there have already been threats
  - › conflict already exists in the workplace
  - › there is a combination of circumstances and risk factors that indicate reprisals or related workplace conflict are likely to occur.
- The potential consequences if they do occur – both to the immediate and long term wellbeing of the internal reporter and the cost to your organisation.

### c) Controlling risks

When it comes to harm to people within your organisation, both good management practice and work health and safety obligations dictate that the threshold of acceptable risk should be low. Above this level, you should plan and implement strategies to control the risks likely to expose an internal reporter to reprisals or related workplace conflict. Any decision on controlling risk should be made in consultation with the internal reporter and will depend on the individual circumstances of the case.

Any prevention strategies should be aimed at the source of the risk and should reflect the degree of risk and potential consequences. For example:

- If the risk is assessed as sufficiently high, you should prepare a plan to prevent and contain reprisals against the internal reporter or related workplace conflict (see [Guideline D4: Preventing and containing reprisals and conflict](#)). This may include verifying the organisational position or work performance of the staff member at the point they reported to provide a benchmark against which alleged reprisals can be measured.
- If it has been determined that an internal reporter will require support, you should develop a strategy for providing an appropriate level of support (see [Guideline D1: Internal reporter support strategy](#)). This may include appointing a support person who can be involved in helping the internal reporter manage their own responses to risks.
- If it is likely that the identity of the internal reporter is known or likely to become known, you should adopt a proactive approach (see [Guideline C7: Confidentiality](#)).

### d) Monitoring and reviewing risks

Risk management is an evolving process. To best prevent reprisals, the risk assessment should be regularly monitored and reviewed as necessary. Issues can arise at any point after a report has been made. This may include:

- during an investigation into the report
- once the outcome of an investigation is known
- if the subject of the report is removed from and then reintegrated into the workplace
- at any point after the investigation is finalised.

You should identify who is responsible for monitoring and reviewing risks and plan how to monitor and address any problems that may arise – such as deterioration in workplace relationships or sudden unexplained changes in work performance.

You should also consult with the internal reporter and any support person on an ongoing basis to check if reprisals have occurred or they have concerns that they will.

Table 1. Indicators of a higher risk of reprisals or related workplace conflict

<b>Threats or past experience</b>	<input type="checkbox"/> Has a specific threat against the internal reporter been received? <input type="checkbox"/> Is there a history of conflict between the internal reporter and the subjects of the report, management, supervisors or colleagues? <input type="checkbox"/> Is there a history of reprisals or other conflict in the workplace? <input type="checkbox"/> Is it likely that the report will exacerbate this?
<b>Confidentiality unlikely to be maintained</b>	<input type="checkbox"/> Who knows that the report has been made or was going to be made? <input type="checkbox"/> Has the internal reporter already raised the substance of the report or disclosed their identity within the workplace? <input type="checkbox"/> Who in the workplace knows the identity of the internal reporter? <input type="checkbox"/> Is the size of the internal reporter's immediate work unit small?*
<b>Significant reported wrongdoing</b>	<input type="checkbox"/> Are there circumstances, such as the stress level of the internal reporter, that will make it difficult for them to not discuss the matter with those in their workplace? <input type="checkbox"/> Will the internal reporter become identified or suspected when the existence or substance of the report is made known or investigated? <input type="checkbox"/> Can the report be investigated while maintaining confidentiality?
<b>Significant reported wrongdoing</b>	<input type="checkbox"/> Are allegations made about individuals in the report? <input type="checkbox"/> Who are their close professional and social associates within the workplace? <input type="checkbox"/> Is there more than one wrongdoer involved in the matter?*
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Is the reported wrongdoing serious?*
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Is or was the reported wrongdoing occurring frequently?*
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Is the report particularly sensitive or embarrassing for any subjects of the report, senior management, your organisation or government? <input type="checkbox"/> Do these people have the intent to take reprisals – for example, because they have a lot to lose? <input type="checkbox"/> Do these people have the opportunity to take reprisals – for example, because they have power over the internal reporter?
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Is or was the reported wrongdoing directed at the internal reporter?*
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Are there multiple subjects of the report? <input type="checkbox"/> Is the report about a more senior officer than the internal reporter?*
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Is the internal reporter employed part-time or on a casual basis?*
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Is the internal reporter isolated – for example, geographically or because of shift work? <input type="checkbox"/> Are the allegations in the report unlikely to be substantiated – for example, because there is a lack of evidence?*
<b>Vulnerable internal reporter</b>	<input type="checkbox"/> Is the report being investigated outside your organisation?*

\* Note: Risks of poor treatment for reporting wrongdoing identified by research.<sup>3</sup>

### 4.3 Consulting with the internal reporter

The internal reporter should be involved in the risk assessment process. You should consult with them when you identify or assess risks of reprisals and related workplace conflict, and make decisions about strategies to control risks. Any concerns expressed by internal reporters about fears of reprisals because they have reported should be seriously addressed.

#### a) Risk of reprisals and related workplace conflict

Discuss with the internal reporter their perception of the likelihood of reprisals and of their identity becoming known.

- Ask the internal reporter who they have told about the wrongdoing or report, and how they think those involved, the associates of those involved, and work colleagues in general might respond.

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- Establish details of any basis for these views. For example:
  - › the likelihood that anyone would have the intent to take reprisals – eg what have those involved got to lose, what is the chance of them getting away with reprisal undetected?
  - › their capability to take such reprisals – what opportunity or what power over the internal reporter do they have?

## b) Motive

Perceptions of motive are a second but important level of information needed for effective risk assessment, especially in less serious cases where there is a high risk of low-level harassment.<sup>4</sup>

The motives of an internal reporter will often be mixed and difficult to determine. They are also usually irrelevant to the investigator's task of determining the truth of the allegation. However, the internal reporter should be asked why they have reported wrongdoing to:

- assess likely perceptions as to why they came forward – and, therefore, how colleagues may respond
- identify and assess the motives of any staff allegedly involved in reprisals, if a later investigation has to occur
- assist in any later deliberations about what is a fair and positive outcome, if counter allegations or other conflict arise.

## 4.4 Keeping records

Keep records of all risk assessments conducted to ensure there is written evidence that your organisation is meeting its obligations to protect internal reporters. These records should include:

- who assessed the risks
- the date of the risk assessment
- whether the internal reporter was consulted
- the factors that have been considered
- the assessment of the risk of reprisals or related workplace conflict
- any action to be taken to prevent or contain reprisals or related workplace conflict.

These records can also help when undertaking future risk assessments.

## 5. Your questions answered

**When conducting a risk assessment, should we consider what can go wrong in addition to reprisals or related workplace conflict?**

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

Yes. While risk assessments are primarily used to determine the risk of reprisals against a reporter, the process outlined in this guideline can – and should – be used to assess and mitigate all risks related to the reporting of wrongdoing. These additional risks could include:

- damage to the reputation of the subjects of the report
- disruption to the relevant workplace and a corresponding decline in performance and efficiency of the internal reporter, the subjects of the report and their colleagues
- that the internal reporter might make a report to an investigating authority, MP or journalist before your organisation has had the opportunity to deal with the issue
- adverse health effects for the reporter, the subjects of the report or any other person affected by the making of the report.

## 6. Additional resources

- [Guideline C7: Confidentiality](#)
- [Guideline D1: Internal reporter support strategy](#)
- [Guideline D4: Preventing and containing reprisals and conflict](#)
- [Fact sheet 7: Confidentiality and its practical alternatives](#)
- AS/NZS International Standard 31000:2009, *Risk management – principles and guidelines*
- Handbook 436: 2004, *Risk management guidelines companion to AS/NZS 4360:2004*
- [Public Interest Disclosures Act 1994](#)
- [Work Health and Safety Act 2011](#)

## 7. Last updated

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## 8. Endnotes

- 1 Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, p. 145.
- 2 Brown, pp. 123, 129, 305.
- 3 Brown, pp. 137–164.
- 4 Commonwealth Ombudsman 1997, *Professional reporting and internal witness protection in the Australian Federal Police – a review of practices and procedures*, Canberra, p. 27.