



Whistleblower laws and your reporting obligations explained

Presented by

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Welcome

'In the spirit of reconciliation, I respectfully acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. I would like to pay my respect to them and their cultures, and Elders past and present'.

Access the presentation slides: tpb.gov.au/webinar-hub

What we will cover today

- ✓ Whistleblower laws
- ✓ Eligible whistleblowers
- ✓ How to make a disclosure
- Breach reporting obligations and how they interact with whistleblowing provisions

- ✓ False or misleading statements and how these provisions interact with whistleblower laws
- Confidentiality obligations
- ✓ Q&A



Tax Whistleblower Protection Regime

The Tax Whistleblower Unit:

- provides governance and assurance to the organisation on matters related to the Regime
- provides a single point of contact for all enquiries
 on the administration of the Regime.



Tax Whistleblower Protection Regime

- The Tax Whistleblower Protection Regime ('the Regime') is in place to protect individuals who disclose information to the ATO about tax misconduct under laws over which the Commissioner has general administration powers. These protections operate by imposing obligations on the Commissioner and other third parties.
- It is separate from the protections under the *Public Interest Disclosure Act 2013* which protect current or former public servants who make disclosures of wrongdoing in the Commonwealth public sector.

There are four main protections:

Confidentiality Victimisation Qualified Immunity Compensation

How does an individual qualify for protection under the Regime?

Not every disclosure qualifies for protections, but every disclosure should be treated as a qualifying disclosure. If there is any doubt contact your technical support officer or Team Leader, so they can seek guidance from the Tax Whistleblower Unit (TWU).

Qualifying for protection under the Regime requires the following criteria to be met:

An eligible whistleblower is someone who is, or has been, in a **specific relationship** with the entity they are making a disclosure about. This includes but is not limited to current or former employees, associates, family relations (including spouse and dependents) or suppliers of goods and services (including tax and BAS agents).

The
disclosure
must assist
the
Commissione
r to perform
his or her
duties

The disclosure must be made voluntarily and proactively

The
disclosure
must be
made to the
Commissione
r, or an
eligible
recipient

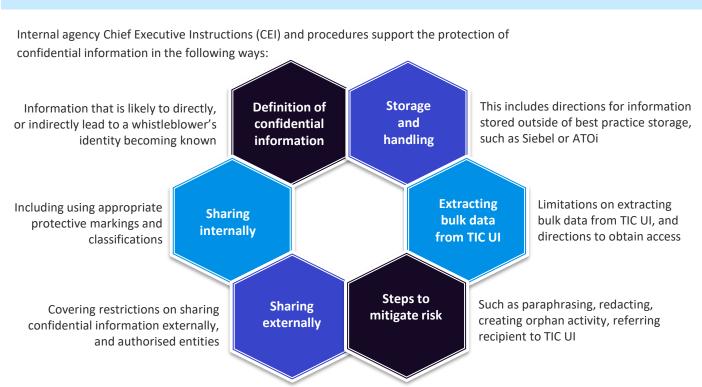
The discloser must be an eligible whistleblowe

The tip-offs we collect can contain information that does not assist the Commissioner in performing his or her functions or duties, and subsequently may not be covered by the protections.

Confidential information

'Confidential information' is defined as information that identifies a whistleblower, or information that is likely to lead to the identification of a whistleblower.

Tip-off information including confidential information is stored within a secure system in a controlled access environment.







Consent and authorised contacts

Consent is the act of a whistleblower providing approval to on-disclose their identity, or information that is likely to lead to their identification, to an otherwise unauthorised entity.



A **consent agreement form** has been designed for obtaining consent from whistleblowers, for the purpose of sharing their identity, or information that may lead to their identification being known, with an unauthorised entity.

Authorised contacts

Consent cannot be provided by an authorised contact on a client's behalf to discuss the disclosure with an unauthorised entity.





Where an authorised contact has made a disclosure to the ATO, on behalf of a client:

- the protections apply to the client as if they made the disclosure themselves
- we can discuss the disclosure directly with the client, and authorised contact
- we cannot discuss the disclosure with a third party, without the client's consent

Where a client has made a disclosure **directly to the ATO**, and they have an authorised contact listed, we cannot:

- discuss the disclosure with the authorised contact, including confirming a tip-off has been received
- contact the authorised contact in relation to the disclosure, without the client's consent

Guidance for sharing information internally and externally

Sharing internally

The sharing of confidential information within the organisation is permitted under the legislation, but it is not without risk



To protect the informants confidential information, agency staff are instructed not to extract information stored in the TIC UI or a restricted drive and share it via email or other channels, instead refer recipient to source.



If agency staff do receive confidential information via any channel, they must limit the extent to which that information is forwarded to others Where it is necessary to share, apply protective markings:

- Security classification Official: Sensitive
- Information management marker -Legislative Secrecy

Sharing externally

Advice is generally sought from the TWU before releasing or sharing information externally

If we need to share confidential information with an external agency, there are only limited authorised entities that this information can be provided to

Tip-off information can be shared with other external agencies in some circumstances – when the information does not identify, nor is likely to identify, the discloser



External agencies we can share information to include:

- Court or tribunal to give effect to the whistleblower protections or where the court or tribunal determines that it would be required in the interests of justice
- Legal practitioners for the purpose of obtaining legal advice regarding the operation of the whistleblower provisions
- Australian Federal Police (AFP)
- Any other person with the consent of the whistleblower

Specialist tax whistleblower roles and responsibilities









Tax Whistleblower Unit

- Provide governance and assurance to the organisation on matters related to the Regime
- Provide a single point of contact for all enquiries on the administration of the Regime
- Assess potential breaches of the Regime by staff to determine a credible risk and collate details for referral to Fraud Prevention and Internal Investigation (FPII) and ATOP Conduct.

Tax Integrity Centre (TIC)

- Administer the TIC UI (User Interface)
- Approve requests for TIC
 UI access
- Manage the collection, sharing and handling of disclosures.

BSL Procedure Owners

- Align relevant BSL procedures which include direction about the Regime with this CEI
- Liaise with the TWU when developing, updating or retiring procedures or processes that include references to the Regime.

General Counsel

- Provide legal advice on the application of the Tax Whistleblower Protection Regime
- Advice should be sought from the TWU before engaging General Counsel.

Breaches and Remedies



Resources

www.ato.gov.au



TPB whistleblower laws

- The whistleblower laws commenced on 1 July 2024.
- The laws extend protections to individuals who 'blow the whistle' about a related entity to us, where they believe the information may assist in performing our functions or duties under the TASA.



Whistleblower qualifications

To qualify for whistleblower protection, you must:

- be an eligible whistleblower
- make the disclosure of information to us or to the Commissioner of Taxation
- consider that the information you provide may assist us to perform our functions or duties under the TASA.



Eligible whistleblowers



To be eligible for protection, you must be an individual who is, or has been, in a relationship with the entity you're disclosing information about. This includes:

- an officer
- an employee of the entity
- an individual who supplies services or goods to the entity
- an employee of a person that supplies services or goods to the entity
- an associate of the entity

- a spouse, child or dependent of an individual referred to above, or a dependent of an individual's spouse
- an individual prescribed by the Taxation Administration Regulations 2017 in relation to the entity.



Whistleblower protection

- You won't be subject to civil, criminal or administrative liability for making a disclosure to us if you are an eligible whistleblower.
- The information you provide is not admissible in evidence against you in criminal proceedings and you cannot be penalised unless the information you provide is false.
- You will receive immunity from disciplinary action and cannot be sanctioned if you disclose information about your client.

How to make a disclosure to us

- You can only qualify for whistleblower protection if your disclosure is made to us on or after 1 July 2024.
- When you make a disclosure to us, complete our complaints form and provide as much detail as possible, including any relevant documentation.



What happens after you make a disclosure?

- You'll receive an acknowledgement with a reference number.
- If we determine your complaint is a complaint we can act on, we will undertake further enquiries.
- We may contact you for further information.



Breach reporting

Overview of breach reporting



- Breach reporting was introduced to:
 - improve tax practitioner conduct
 - enhance the protection of clients
 - increase confidence in the integrity of the regulatory system.
- There are 2 types of breach reporting requirements:
 - self-reporting
 - reporting another tax practitioner.
- You must have reasonable grounds to believe there has been a significant breach.

Whistleblower protections and breach reporting



- Breaches reports can't be made anonymously.
- You need to identify yourself and provide your contacts details to comply.
- If you're concerned about confidentiality or having your identity disclosed, you should advise us when you report.
- If you're an eligible whistleblower, you'll have your identity protected, unless the disclosure is being made to an authorised body or you provide your consent to have your identity disclosed.

False or misleading statements

False or misleading statements

Where a tax practitioner knows, or ought reasonably to know, a statement is false or misleading in a material particular, or omits something that makes the statement misleading, they must not:

Make the statement to the TPB or Commissioner

Prepare the statement that is likely to be made to the TPB or Commissioner

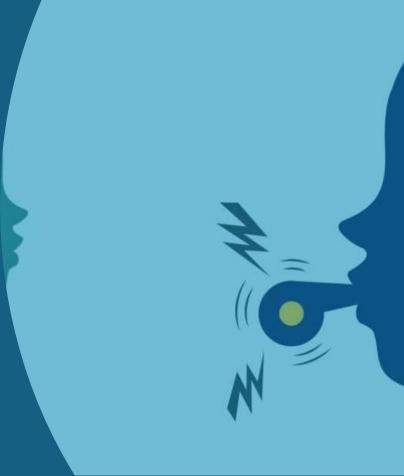
(3)
Permit or direct someone
else to make or prepare
such a statement

Notifying a false or misleading statement

How to notify – false or misleading statements

- Understand if you need to notify by referring to <u>TPB's Information</u> sheet
- 2. Go to How to notify us on the ATO website
- 3. Download the Tax practitioner assistance form (PDF, 204KB)
- 4. Complete the form using the instructions in How to notify us

We are currently finalising a secure inbound channel for registered agents to make a False or misleading statement notification, which we expect will be available shortly.



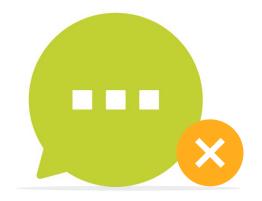
Notifying the TPB about false or misleading statements

- To notify the TPB, use our online form
 Notify a change in circumstances,
 available from our Contact us page.
- Select the option to report a false or misleading statement and then provide details about the false or misleading statement.



Whistleblower protections & false or misleading statements

- A false or misleading statement made may lead to a significant breach of the Code.
- If you believe you've committed a 'significant breach', you must report to the TPB under the breach reporting requirements.



Whistleblower protections and breach reporting

- While false or misleading and breach reporting obligations are separate, in some circumstances a single notification may satisfy both obligations.
- In some circumstances, when reporting a false or misleading statement breach, you may be eligible for whistleblower protections.



Confidentiality and breach reporting, false or misleading statement or whistleblowing



Confidentiality of client information

- Code item 6 states, unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission.
- It is your legal duty under the TASA to report a Code breach or false or misleading statement made, so there's no breach to Code item 6.
- Similarly, if you are an eligible whistleblower, making a disclosure under the whistleblowing provisions will not be in breach of Code item 6.
- This is subject to any legal provisional privilege that may apply.



Questions

Stay in touch with the TPB



tpb.gov.au



tpb.gov.au/contact



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Overseas enquiries +61 2 6216 3443

Our enquiry lines are open Monday to Friday 9 am to 5 pm (Sydney time)



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