



Whistleblower Policy

Introduction

The Franchise Council of Australia (**FCA**) recognises the expectations of members, regulators and the community and is committed to best practice in corporate governance, compliance and ethical behaviour generally. One of the principal responsibilities of the FCA includes assisting its members to be aware of, and address, regulatory, ethical and any other relevant requirements.

The FCA membership is diverse, with franchise networks spanning most industry sectors. The commercial environment of each industry sector can vary significantly, as can the commercial arrangements and respective responsibilities of franchisors and franchisees in franchise networks that operate in the different sectors. Some franchise networks feature detailed business format specifications, whereas others can be quite flexible. There are also wide variations in fee structures and commercial terms. It is therefore not possible to adopt a “one size fits all” or highly prescriptive approach when outlining governance, compliance or ethical expectations.

The FCA aims to provide an environment in which people are comfortable voicing genuine concerns in relation to Improper Conduct (as defined below). The FCA also aims to provide its members with guidance as to the sorts of issues that may arise, and suggestions as to how issues might be addressed in a notional “best practice” context. Individual franchise systems can then consider how to specifically address the issues in the context of their particular circumstances.

To achieve this outcome, the FCA is committed to ensuring that:

- members and other persons will not be victimised for raising general concerns; and
- all concerns raised will be assessed and where appropriate, investigated by the FCA or referred to an appropriate third party, subject to common sense constraints such as the extent such is permitted by law and the powers of the FCA and possible having regard to the resources of the FCA and other relevant factors.

This policy covers the procedures for disclosing Improper Conduct and is intended to apply:-

1. as a commitment of the FCA in the context of the FCA’s own affairs; and
2. as guidance to FCA members in their affairs.

This policy states the FCA’s commitment to listening to, investigating and treating in confidence a disclosure made on reasonable grounds and in good faith in accordance with this Policy, and the FCA’s expectations of similar behaviour by FCA members in the context of FCA Member Standards. This policy also addresses the protection of individuals making such disclosures.

This Policy has been prepared having regard to:

- Australian Standard 8004-2003 – Whistleblower Protection Program for Entities;
- Part 9.4AAA of the Corporations Act 2001 (Cth) (the '**Corporations Act**'); and
- the FCA's Member Standards.

Application of this Policy

For the purposes of this Policy:

- A disclosure made in accordance with this Policy is referred to as a Protected Disclosure; and
- A person who makes a Protected Disclosure in accordance with this Policy is referred to as a Protected Whistleblower.

Who does this Policy apply to?

This Policy applies to all individuals, whether members or non-members of the FCA, who make a Protected Disclosure to the FCA pursuant to this Policy. This Policy is intended as guidance for FCA members in relation to all individuals who make a Protected Disclosure to an FCA member.

What is a Protected Disclosure?

This Policy applies to any disclosure of information to the FCA relating to a genuine concern that Improper Conduct has occurred or is likely to occur provided that the individual:

- Has reasonable grounds to suspect that the information indicates Improper Conduct; and
- Makes the disclosure in good faith (a "**Protected Disclosure**").

Protections provided by this policy do not apply to an individual who has not acted in good faith in making a disclosure under this Policy.

What is Improper Conduct?

For the purposes of this Policy, Improper Conduct includes:

- Material breaches of any laws arising from statute, common law or otherwise, including but not limited to the Franchising Code of Conduct;
- Material breaches of the FCA's internal policies including the FCA's Member Standards and this Policy;
- The commission of any criminal offence;

- Financial malpractice, impropriety or fraud;
- Conduct that endangers (or may endanger) the health and safety of any person or the environment;
- Any other conduct which may cause financial or non-financial loss:-
 - to the FCA or be otherwise detrimental to the interests of the FCA; or
 - where an FCA member adopts this policy, to the FCA or be otherwise detrimental to the interests of the FCA member.
- Any other attempt to conceal any of the above conduct.

This Policy is not intended to apply to complaints of discrimination, bullying or harassment of the FCA's employees. Such concerns should be raised with the Human Resources Manager of the FCA or FCA member as applicable and/ or the Fair Work Ombudsman in accordance with the relevant workplace laws and policies.

Procedure for making a disclosure?

Who should disclosures be made to?

An individual who wishes to disclose Improper Conduct should contact the Whistleblower Protection Officer, either in person, by telephone or in writing. The role of the Whistleblower Protection Officer is to safeguard the interests of an individual making a Protected Disclosure.

The Chief Executive Officer has been appointed by the FCA as the Whistleblower Protections Officer. An individual wishing to raise an issue or complaint can contact the Whistleblower Protections Officer via Phone: 03 9508 0804 or via mail Suite 5B, Level 1, 307-313 Wattletree Road, Malvern East VICTORIA 3145 or via email complaintsofficer@franchise.org.au

If an individual is concerned about making a disclosure to the Whistleblower Protection Officer, they should contact the Chairman either in person, by telephone or in writing.

What information should be provided?

To enable Improper Conduct to be properly investigated and addressed by the FCA, it is recommended that Protected Disclosures contain the following kinds of information:

- That the disclosure is being made pursuant to this Policy;
- The nature of the Improper Conduct and when it occurred or is likely to occur;
- The name(s) of people involved in the Improper Conduct; and
- Any material to support the matters raised in the Protected Disclosure such as documents, emails or the names of potential witnesses.

Anonymity?

An individual may disclose information under this Policy anonymously and the FCA will treat anonymous disclosures seriously. However, as it may be more difficult to investigate concerns that are reported anonymously, individuals are encouraged to provide their identity when making a disclosure under this Policy.

When deciding whether or not to make a Protected Disclosure anonymously, individuals should have regard to the extent to which an anonymous disclosure may limit the ability of the FCA to investigate the matters disclosed. To enable the FCA to properly respond to the matters raised, individuals are generally encouraged to disclose their identity when making a Protected Disclosure.

Confidentiality?

Any protected Disclosure made by an individual under this Policy will be kept confidential and secure in accordance with the law.

In order to enable the FCA to effectively investigate allegations of Improper Conduct which are disclosed in accordance with this Policy, individual making a disclosure are encouraged to consent to the information about the alleged Improper Conduct being disclosed to the FCA Governance, Standards and Ethics Committee or any similar body established by the FCA.

FCA Governance, Standards and Ethics Committee

Where the Improper Conduct related to a breach of the FCA's Member Standards, and if permitted by law, the Whistleblower Protection Officer will provide sufficient details about the alleged Improper Conduct to the FCA Governance, Standards and Ethics Committee to enable the investigation to be conducted.

The FCA Governance, Standards and Ethics Committee is responsible for conducting an investigation into the alleged Improper Conduct. The investigation will be fair and reasonable and the rules of natural justice will be observed. The FCA Governance, Standards and Ethics Committee will provide the disclosing individual with feedback in relation to the status and outcome of an investigation, as appropriate.

Can disclosures be made to external parties?

The purpose of this Policy is to facilitate and encourage the reporting of Improper Conduct to the FCA and within the FCA's internal structures.

Nothing in this Policy is intended to obstruct any person from reporting possible violations of law or regulation to any government agency or entity, or making other disclosures that are protected under the whistleblower provisions of relevant law or regulation. Individuals may also be legally required to report certain matters to government or regulatory authorities.

It is recommended that individuals contemplating reporting matters outside the FCA first seek independent legal advice in relation to their rights and obligations.

Investigation of Improper Conduct?

What steps will be taken by the organisation following a Protected Disclosure?

The FCA will investigate Improper Conduct reported in Protected Disclosures or refer the matter or the complainant to an appropriate third party, subject to:-

1. the extent any investigation is permitted by law and the powers of the FCA or an FCA member as applicable;
2. the extent it is practicable given the nature of the Protected Disclosure, the capacity of the FCA or the FCA member to conduct any investigation or reach a relevant conclusion; and
3. common sense constraints such as the skills and resources of the FCA or the FCA member, risk to the FCA or the FCA member of any legal claim and any other relevant factors.

Investigations will be conducted independently of the individual whistleblower or any person involved in the Improper Conduct.

For FCA matters investigations will be coordinated by the FCA Governance, Standards and Ethics Committee and may involve other personnel within the FCA including the Executive Committee or the Board. Individuals will be provided with an opportunity to discuss the general investigation process and steps to be taken by the FCA in response to their Protected Disclosure.

To the extent permitted by law and where appropriate to do so, the FCA Governance, Standards and Ethics Committee will communicate the outcomes of an investigation arising from a Protected Disclosure to an individual whistleblower as soon as practicable after the investigation has concluded. Unless otherwise provided by law, the decision of whether to communicate the outcomes of an investigation arising from a Protected Disclosure will be made by the FCA or the FCA member as applicable in its absolute discretion.

Will a Protected Disclosure be disclosed to other parties?

Files and records relating to Protected Disclosures will be maintained by the FCA or the FCA member as applicable on a confidential basis and stored securely.

Protected Disclosures will be treated in a sensitive manner and will only be disclosed to people who are relevant to the investigation, other than in the following circumstances:

- the individual whistleblower has been consulted and consents in writing for the disclosure;
- it is appropriate, based on independent legal advice received by the FCA or the FCA member to do so or is compelled by law to do so;
- disclosure is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person; or

- disclosure is necessary for the purposes of the FCA or the FCA member obtaining independent legal advice.

Following an internal investigation arising from a Protected Disclosure, it may be necessary for the FCA or the FCA member to disclose information independently obtained during the investigation process for the purposes of protecting or enforcing a legal right or interest. To the extent permitted by law, such information will not be subject to the same obligation of confidentiality applying to the Protected Disclosure.

Protections of Whistleblowers

The FCA is committed to protecting an individual from reprisals or personal disadvantage as a result of making a Protected Disclosure. Such protections are an essential element of creating an environment in which all individuals are comfortable reporting any Improper Conduct internally.

A person purporting to be a protected whistleblower who is implicated in any Improper Conduct, whether the subject of the relevant Protected Disclosure or not, may not be entitled to all of the protections conferred by this Policy. If you have engaged in Improper Conduct, you may want to consider seeking independent advice in relation to your liability and the protections that may or may not be available to you if you make a disclosure.

Subject to the terms of this Policy, the FCA or FCA member (if applicable) will take all reasonable steps to ensure that a protected whistleblower will not be personally disadvantaged as a result of having made a Protected Disclosure. In particular, the FCA or FCA member (if applicable) will not take any such retaliatory action against a whistleblower including but not limited to:

- any form of harassment;
- any form of discrimination; or
- current or future bias.

The protections conferred by this Policy are intended to be in addition to any rights and protections otherwise legally conferred on protected whistleblowers.

A protected whistleblower who suspects to have been, or has in fact been, subject to retaliation as a result of making a Protected Disclosure should report this matter to the FCA Governance, Standards and Ethics Committee.

Complaints the FCA cannot investigate

The FCA is only able to investigate disclosures of Improper Conduct that relates to a breach of the FCA Member Standards. In the event that the Improper Conduct does not involve an alleged breach of the FCA Member Standards, the FCA will take reasonable steps to assist the individual in reporting the Improper Conduct to the appropriate government agency or regulatory body.

An individual who reports Improper Conduct that does not involve a breach of the FCA Member Standards will still be subject to the whistle-blower protections set out in this Policy.

What are the consequences for vexatious or disingenuous disclosures?

Where it is established by the FCA Governance, Standards and Ethics Committee that a person purporting to be a protected whistleblower has made a vexatious or disingenuous report of Improper Conduct, that conduct will itself be considered a serious matter and may render that person subject to suspension or expulsion of any membership they hold with the FCA.

Review

The FCA will review this Policy from time to time as circumstances require.

Contacts

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