

AS 8004—2003
(Incorporating Amendment No. 1)

AS 8004—2003

Australian Standard™

**Whistleblower protection programs for
entities**



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Whistleblower protection programs for entities

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PREFACE

This Standard was prepared by the Standards Australia Committee MB-004, Business Governance.

This Standard incorporates Amendment No. 1 (November 2004). The change arising from this Amendment applies to the Committee representatives list on the inside front cover of this Standard.

The objective of this Standard is to provide essential elements for establishing, implementing and managing an effective whistleblower scheme within an entity and provides guidance when using these elements.

This Standard is part of the Governance Series which comprises:

- AS 8000 Good governance principles
- AS 8001 Fraud and corruption control
- AS 8002 Organizational Codes of Conduct
- AS 8003 Corporate social responsibility
- AS 8004 Whistleblower protection programs for entities (this Standard)

This standard draws on the provisions of *The Whistleblowers Protection Act 2001* (Victoria)¹.

This Standard recognizes that there are general laws in place regulating how to comply with whistleblower protection programs. The intention is not to cut across the law, but enhance the legislation. If there is any doubt as to a potential conflict between the law and this Standard, seek professional advice.

This Standard complements existing guidelines produced by IFSA, ASX Corporate Governance Council and suggest the reader follows up these references for guidance as appropriate.

¹ The Victorian legislation deals only with whistleblowing within the Victorian public sector.

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FOREWORD

A whistleblower protection program is an important element in detecting corrupt, illegal or other undesirable conduct (defined later in this standard as ‘reportable conduct’) within an entity, and as such, is a necessary ingredient in achieving good corporate governance.

An effective whistleblower program can result in—

- (a) more effective compliance with relevant laws;
- (b) more efficient fiscal management of the entity through, for example, the reporting of waste and improper tendering practices;
- (c) a healthier and safer work environment through the reporting of unsafe practices;
- (d) more effective management;
- (e) improved morale within the entity; and
- (f) an enhanced perception and the reality that the entity is taking its governance obligations seriously.

STANDARDS AUSTRALIA

Australian Standard

Whistleblower protection programs for entities

SECTION 1 SCOPE AND GENERAL

1.1 SCOPE AND APPLICATION

This Standard sets out the elements for establishing, implementing and managing an effective whistleblower protection program. It is intended as a practical guide for corporations, government agencies and not-for-profit entities wishing to implement such a program.

In some cases, entities seeking to implement a whistleblower protection program may need to comply with relevant legislation in particular jurisdictions. This may be of particular relevance for entities operating within the government sector.

1.2 OBJECTIVE

The purpose of this Standard is to provide guidance for entities seeking to implement a whistleblower protection program. The proposed objectives of such a whistleblower protection program are to—

- (a) encourage the reporting of matters that may cause financial or non-financial loss to the entity or damage to the entity's reputation;
- (b) enable the entity to effectively deal with reports from whistleblowers in a way that will protect the identity of the whistleblower and provide for the secure storage of the information provided;
- (c) establish the policies for protecting whistleblowers against reprisal by any person internal or external to the entity; and
- (d) provide for the appropriate infrastructure including the appointment of a 'Whistleblower Protection Officer' and a 'Whistleblower Investigations Officer' and alternative means of reporting.

1.3 RELATIONSHIP WITH OTHER STANDARDS

This Standard should be read, construed and applied in conjunction with the following Standards:

AS/NZS 4360	Risk management
AS 8000	Good governance principles
AS 8001	Fraud and corruption control
AS 8002	Organizational Codes of Conduct

1.4 DEFINITIONS

For the purpose of this Standard, the definitions in AS 8000 and those below apply.

1.4.1 Corruption

Dishonest activity in which a Director, executive, manager, employee or contractor of an entity acts contrary to the interests of the entity and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity.

1.4.2 Entity

A corporation, government agency, not-for-profit or other entity engaged in business activity or transacting with other entities in a business-like setting.

1.4.3 Fraud

Dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity and whether or not deception is used at the time, immediately before or immediately following the activity. It also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position.

1.4.4 Immunity

An undertaking given by an entity to a whistleblower in relation to action it intends not to take against the whistleblower as a result of receiving a report of reportable conduct from the whistleblower.

1.4.5 Investigation

A search evidence connecting or tending to connect a person (either a natural person or a body corporate) with conduct that infringes the criminal law or the policies and standards set by the entity concerned.

1.4.6 Reportable conduct

Conduct by a person or persons connected with an entity which, in the view of a whistleblower acting in good faith, is—

- (a) dishonest;
- (b) fraudulent;
- (c) corrupt;
- (d) illegal (including theft, drug sale/use, violence or threatened violence and criminal damage against property);
- (e) in breach of Commonwealth or state legislation or local authority by-laws (e.g. *Trade Practices Act* or *Income Tax Assessment Act*);
- (f) unethical (either representing a breach of the entity's code of conduct or generally);
- (g) other serious improper conduct;
- (h) an unsafe work-practice; or
- (i) any other conduct which may cause financial or non-financial loss to the entity or be otherwise detrimental to the interests of the entity.

An entity may also wish to consider including in its definition of reportable conduct such conduct as gross mismanagement, serious and substantial waste or repeated instances of breach of administrative procedures.

1.4.7 Whistleblower

A person being a director, manager, employee or contractor of an entity who, whether anonymously or not, makes, attempts to make or wishes to make a report in connection with reportable conduct and where the whistleblower wishes to avail themselves of protection against reprisal for having made the report. A whistleblower may or may not wish to remain anonymous.

1.4.8 Whistleblower Investigations Officer

A person or persons being a director, manager, employee or contractor of an entity who has responsibility for conducting preliminary investigations into reports received from a whistleblower. A person who is a Whistleblower Protection Officer should not be appointed a Whistleblower Investigations Officer within the same entity.

1.4.9 Whistleblower Protection Officer

A person or persons being a director, manager, employee or contractor of an entity who has responsibility for protecting whistleblowers within the meaning of this Standard.

SECTION 2 ESSENTIAL ELEMENTS OF AN EFFECTIVE WHISTLEBLOWER PROTECTION PROGRAM

2.1 SCOPE OF SECTION

This Section sets out the essential elements of an effective whistleblower protection program. Such a program should, as a minimum, satisfy the structural, operational and maintenance elements outlined below.

2.2 STRUCTURAL ELEMENTS

2.2.1 Commitment

There should be a commitment to effective reporting of corrupt and illegal practices, and all behaviour that is contrary to the Code of Conduct, by people at all levels within the entity, starting with the board or governing body, the chief executive officer and senior management.

2.2.2 Whistleblower protection policy

A whistleblower protection policy should be established. The policy should include a clear statement of the entity's commitment to comply with applicable laws and practices including this Standard. It should also include a statement that the purpose of the policy is to encourage the reporting of reportable conduct.

The policy needs to articulate the benefits and importance to the entity of having such a program as well as sanctions and disciplinary procedures for non-compliance with the entity's whistleblower protection policy.

The policy should clearly provide for the mechanisms by which whistleblower complaints can be made (for example an internal or external 'Whistleblower Hotline') and a statement that all reports will be kept confidential and secure. There should also be a guarantee that whistleblowers will receive feedback and the fact that the entity is committed to protecting whistleblowers.

The whistleblower protection policy should stipulate that any person who reports reportable conduct as defined by this Standard must not be personally disadvantaged by having made the report by:

- (a) Dismissal.
- (b) Demotion.
- (c) Any form of harassment.
- (d) Discrimination.
- (e) Current or future bias.

Where reprisals are taken or are claimed to have been taken against a whistleblower, the whistleblower should have an automatic right of appeal to an independent appeal body, such as the ethics committee of the entity concerned or an independent mediator or arbitrator, if the matter cannot be resolved internally. It is desirable that all parties accept the determination of the independent appeal body.

Appendix A provides a suggested checklist of the matters which should be addressed in a whistleblower protection policy.

2.2.3 Resources

Adequate resources are necessary to implement a whistleblower protection program.

This should include the provision of:

- (a) A Whistleblower Protection Officer as defined by this Standard.
- (b) A Whistleblower Investigations Officer as defined by this Standard.
- (c) An internal reporting line.
- (d) An external reporting line.
- (e) Regular training for all relevant personnel.
- (f) A mechanism for appeals.

2.3 OPERATIONAL ELEMENTS

2.3.1 Appointment of a designated Whistleblower Protection Officer

An entity wishing to implement a whistleblower protection program should appoint an appropriately qualified and suitable person to the position of Whistleblower Protection Officer.

In large or geographically dispersed entities, it may be useful to identify a number of Whistleblower Protection Officers who report to one person who is appointed a coordinator. Whistleblower Protection Officers should maintain the strictest confidentiality of the whistleblower.

The qualities desirable in the designated Whistleblower Protection Officer include:

- (a) Trustworthiness.
- (b) An ability to relate to people and to reassure them.
- (c) Diplomacy and tact.
- (d) The ability to be objective.

The selection process would have added credibility if a representative from a recognised integrity or ethics body was included in the selection process.

The role of the Whistleblower Protection Officer is to safeguard the interests of the whistleblower in terms of this standard, the policies of the entity by which the whistleblower is employed and any applicable legislation.

The Whistleblower Protection Officer should have direct, unfettered access to independent financial, legal and operational advisers as required.

2.3.2 Appointment of a designated Whistleblower Investigations Officer

The role of the Whistleblower Investigation Officer is to investigate the substance of the complaint to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made.

The qualities desirable in the designated Whistleblower Investigations Officer include:

- (a) Sound judgement.
- (b) Investigation skills.
- (c) Integrity.
- (d) Communication skills.
- (e) Diplomacy.
- (f) Objectivity.

2.3.3 Independence of the Whistleblower Protection Officer and Whistleblower Investigations Officer

The responsibilities of the Whistleblower Protection Officer and Whistleblower Investigations Officer should not reside in the same person. The two appointees should operate and be seen to operate independently of each other and should act in such a way that they discharge the two quite separate functions independently of each other.

2.3.4 Establishment of reporting mechanisms

The entity should have dedicated and highly visible alternative means for reporting reportable conduct (e.g. a 'Whistleblower Hotline'). These alternative means should be well communicated to all employees, managers, contractors and other persons connected to the entity.

2.3.5 Confidentiality

A whistleblower who reports or seeks to report reportable conduct should be given a guarantee of anonymity (if anonymity is desired by the whistleblower) bearing in mind, that in certain circumstances, the law may require disclosure of the identity of the whistleblower in legal proceedings.

Confidentiality should be limited as far as possible to a designated whistleblower protection officer. Files created on reports of such practices should be kept secure.

Information received from a whistleblower must be held in the strictest confidence and must only be disclosed to a person not connected with the investigation of the matters raised—

- (a) if the whistleblower has been consulted and consents in writing to the disclosure; or
- (b) if the entity or the entity's whistleblower protection officer or whistleblower investigations officer are compelled by law to do so.

2.3.6 Communication with the whistleblower

If a person making a report of reportable conduct is an employee, the entity should ensure that the whistleblower is kept informed of the outcomes of the investigation of his/her report subject to the considerations of privacy of those against whom the allegations are made and customary practices of confidentiality with the entity. A program for timely reporting to the whistleblower on progress on dealing with the complaint and a timeframe for reporting should be established.

If the person making a report of reportable conduct is not an employee, then this communication policy should apply once the person has agreed in writing to maintain confidentiality in relation to any information provided to him or her in relation to a report made by him or her.

2.3.7 Investigation

All reports of reportable conduct should be the subject of a thorough investigation with the objective of locating evidence that either substantiates or refutes the claims made by the whistleblower.

Such investigations should be conducted by the Whistleblower Investigations Officer. They should follow best practice in investigations and be fair and independent of either the business unit concerned, the whistleblower or any person being the subject of the reportable conduct.

The rules of natural justice should be observed in any investigation arising out of a whistleblower report. For example, the investigation should be conducted without bias and the person against whom the allegation is made should be given the right to respond².

In the interest of both the perception and reality of objectivity, consideration should be given to employing outside investigators at arms length from the entity, particularly where the case of allegation is serious.

Professional investigation management includes the following principles:

- (a) Investigations are subject to the realities of resource allocations, and so project management techniques need to be applied over a number of phases, each having clear statements of their objectives in terms of quality, time and cost.
- (b) The investigation process should be open to administrative, operational and judicial review. An audit trail must be maintained relating investigation activities back to approved plans, and documenting critical decisions made during the course of the investigation.
- (c) The system used to manage investigations should be flexible. Communication should be clear and unambiguous, and a multi-disciplinary team approach is advisable where relevant to the issue in question. Successful resolution of a matter may be compromised if certain procedural steps are not followed during an investigation, and so it may be appropriate to seek advice from external appropriately qualified expertise.

2.3.8 Immunity from disciplinary action

Entities should promote a culture that encourages the reporting of reportable conduct by implementing a policy for granting administrative immunity for whistleblowers.

Such a policy may provide that where a whistleblower acting in good faith and who has not him or herself engaged in serious misconduct or illegal conduct, may be provided with immunity from disciplinary proceedings.

NOTE: An entity has no power to offer any person immunity against prosecution in the criminal jurisdiction. Immunity against prosecution can only be granted, in most jurisdictions, by the Director of Public Prosecutions.

2.3.9 Reporting

Internal reporting arrangements should ensure that—

- (a) all verifiable corruption and compliance failures are dealt with appropriately; and
- (b) systemic and recurring problems of corruption and non-compliance are reported to those with sufficient authority to correct them.

The Whistleblower Protection Officer and the Whistleblower Investigations Officer should have a direct line of reporting to the chief executive officer [CEO] or other senior executive and, if one is appointed, the audit, ethics or compliance committee or equivalent.

In cases where the CEO has been accused of reportable conduct, or where he or she has a close relationship with the person against whom the accusation is made, the Whistleblower Protection Officer and Whistleblower Investigations Officer should have direct access to the CEO or the committee referred to above.

Entities may wish to consider alternative forms of reporting, for example to the internal or external auditor, compliance committee or relevant external agency.

² Refer to Clause 4.3 of AS 8001, *Fraud and corruption control* for guidance on conducting investigations into allegations of fraud or corrupt conduct.

2.3.10 False reporting by a person purporting to be a whistleblower

Where it is shown that a person purporting to be a whistleblower has made a false report of reportable conduct, then that conduct itself should be considered a serious matter and render the person concerned subject to disciplinary proceedings as provided for by the entity's internal policies and procedures.

2.3.11 Unauthorised release of information received from a whistleblower

Information coming into the possession of a person from a whistleblower must not be released without authority to any person who is not involved in the investigation or resolution of the matter unless as provided by this Standard.

Similarly, the identity or any information that may lead to the identification of a whistleblower must not be released to any person who is not involved in the investigation or resolution of the matter.

A breach of this policy should be regarded by the entity as a serious disciplinary matter and dealt with accordingly.

2.3.12 Codes of conduct

An entity should ensure that it has a well documented and communicated Code of Conduct that clearly sets out conduct the entity deems unacceptable. Failure to comply with the code would be seen as reportable conduct within the meaning of this Standard. Such guidance would be enhanced if organizational specific examples of reportable conduct were set out. (Refer to AS 8002 *Organizational codes of conduct* for further guidance).

2.4 MAINTENANCE ELEMENTS

2.4.1 Education and training

Each employee should be made aware of corrupt practices that may arise from their day-to-day work given the nature of the entity's operations and be given practical advice on how to avoid these situations.

The importance of reporting corrupt and illegal practices and the entity's reasons for such reporting should be part of the training program. This should be done both as part of the entity's induction and ongoing training as well as emphasising the undesirability of malicious or vexatious reporting.

Such training and education programs should also cover the entity's Code of Conduct where it exists.

2.4.2 Visibility and communication

The entity's commitment to and requirements for reporting of reportable conduct needs to be continuously publicised to staff, agents, contractors and other relevant third parties. Details of the types of complaints the whistleblower policy seeks to deal with and where complaints can be directed should be prominently displayed (e.g. in internal newsletters, internal phone lists, etc.).

2.4.3 Review

The whistleblower protection program should be reviewed regularly to ensure its effectiveness.

2.4.4 Accountability

There should be appropriate reporting on the operation of the whistleblower program against documented performance standards. Such reporting should protect disclosure of the details of the whistleblower either directly or by implication.

APPENDIX A

SUGGESTED CHECKLIST OF MATTERS TO BE ADDRESSED IN A
WHISTLEBLOWER PROTECTION PROGRAM

(Informative)

- 1 A statement of the entity's commitment to a culture of corporate compliance and ethical behaviour generally.
- 2 A statement of the entity's opinion of reporting wrongdoing through appropriate channels.
- 3 A statement of the benefits and importance to the entity of having a whistleblowing mechanism.
- 4 A statement of to whom and how whistleblowing concerns can be directed.
- 5 A description of the types of concerns where it is appropriate to use the whistleblowing mechanism.
- 6 Who may invoke the whistleblowing mechanism (i.e. employees, contractors, the general public, etc.).
- 7 Guidelines on how sure the whistleblower should be of the truth of their concerns before invoking the whistleblowing mechanism (i.e. the degree to which the whistleblower will be required to prove their concerns).
- 8 A statement that reporting will be kept confidential and secure within the law.
- 9 A guarantee that whistleblowers will receive feedback.
- 10 A statement of the entity's commitment to protect and respect whistleblowers, including a commitment to protect the whistleblower's identity to the extent permitted by law, a prohibition on reprisals, discrimination, harassment or victimisation against any suspected whistleblower, their colleagues or relatives.
- 11 A description of the rights of the whistleblower to request positive action by the entity to protect them e.g. relocation or leave of absence during the investigation where it will not be possible to maintain the anonymity of the whistleblower.
- 12 A commitment to appoint and maintain an appropriately qualified Whistleblower Protection Officer is accessible to all staff.
- 13 Whether reports may be made anonymously.
- 14 A description of the investigation process which the entity is committed to follow on receipt of a whistleblowing report, including the principles of fairness which will apply to the investigation and a commitment to rectify any wrongdoing verified by the investigation to the extent practicable in all the circumstances.
- 15 A commitment to review the whistleblowing program regularly for effectiveness.

AMENDMENT CONTROL SHEET

AS 8004—2003

Amendment No. 1 (2004)

CORRECTION

SUMMARY: This Amendment applies to the Committee representatives list.
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GPO Box 5420 Sydney NSW 2001

Administration Phone (02) 8206 6000 Fax (02) 8206 6001 Email mail@standards.com.au

Customer Service Phone 1300 65 46 46 Fax 1300 65 49 49 Email sales@standards.com.au

Internet www.standards.org.au

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