

White Paper

Introducing a Charter of Rights for Employees Being Investigated

UPDATED 2020

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Contents

Background	2
- Purpose	2
- Background	2
Discussion	2
- Issue	2
- History	2
- Discussion	3
Conclusion	5
- Summary	5
- Conclusion	5
Bibliography and References	6
Terms and definitions used in this paper	6
Purpose of White Papers	6
Author's Biography	6
About the Institute of Internal Auditors–Australia	6
Copyright	7
Disclaimer	7

Background

Purpose

Investigation of allegations of fraud or wrongdoing can have long-term detrimental impacts on an organisation and innocent employees if the process is not consistently handled in a well-defined, fair, equitable and effective manner. The availability of a Charter of Rights can minimise the risk of lost productivity through employee disengagement and demotivation when there is no basis to allegations. It can also help to preserve the mental wellbeing of innocent employees.

Background

Engaged and capable employees underpin the success of most organisations. It is difficult to quantify the precise financial impacts when innocent employees are the subject of allegations of fraud, corruption, misbehaviour and other wrongdoing, but the potential cost can be significant in terms of both bottom line impacts and employee turnover costs. Global research shows that about 60% of allegations of wrongdoing against employees are unsubstantiated.

It is even more difficult to measure the impact on an innocent employee's mental wellbeing.

There is an opportunity for governance, risk management,

compliance, auditing and other professionals to champion a Charter of Rights for their organisation to help preserve employee value. This White Paper outlines the key steps to establishing such a charter.

"Substantiation Rate of Allegations - 40%"

Source: 2014 NAVEX Global Ethics and Compliance Hotline Benchmark Report, p 14

Discussion

Issue

Management has a duty of care to its employees. In shaping an ethical culture, management should act in a way that protects the future and does no harm.

Natural justice principles place obligations on management for clear and unambiguous communication with respondents to allegations. This includes giving employees against whom allegations of wrongdoing have been raised the opportunity to:

- Be heard.
- Present their point of view.
- Respond to any adverse material before decisions are made.
- Be informed of decisions affecting them.

An employee's disengagement (when innocent employees are the subject of investigations) might potentially have a flow-on adverse impact on the morale of the workforce more generally. Poor workforce morale can inhibit the organisation's ability to achieve its business or statutory objectives, and could result in reputational damage for the organisation. A Charter of Rights can help to provide an effective buffer to these undesirable outcomes.

History

Employee costs represent one of the largest expense lines in an organisation's financial statements, and in many organisations it is the largest single expense item.

In turn, employee turnover costs can represent a significant 'waste' of time and expense when an innocent employee decides to leave an organisation because of the emotional damage caused by lax support and unconscionable treatment during the investigation of allegations of wrongdoing that were ultimately found to be unsubstantiated. This is illustrated in the case study below.

Case Study – Fighting to save his reputation

Ron had reached the pinnacle of his career. He held a senior position at a large organisation with responsibility to rebuild a specialist function. Then unexpectedly, allegations of

Introducing a Charter of Rights for Employees Being Investigated

impropriety and improper behaviour were raised against Ron by unknown complainants.

While Ron knew he was completely innocent, some of the allegations were of such a serious nature that they had the potential to ruin his career ... and derail the transformation of the specialist function. The allegations were investigated and after several months of uncertainty Ron was cleared of all allegations.

But finding all the help he needed to fight the allegations had been difficult. The organisation had many policies and procedures covering ethical requirements, raising allegations, investigation approaches and the like. Ron spent many hours of his own time trying to locate meaningful and helpful information for him ... the respondent. That sort of information was virtually non-existent, and what was there seemed to be hidden away amongst other drab corporate policies, seemingly put there as an afterthought.

Then the penny dropped! By unexpectedly switching places, Ron realised that respondents needed some help too ... through a 'Charter of Rights'.

The quantification of employee turnover costs is illustrated below.



Employee retention and productivity are increasingly critical for organisations as economic forces become tighter, communication channels continue to evolve, the operating environment becomes more competitive, and the search for talent becomes more pronounced.

Organisations are increasingly responding to the current competitive employment climate by establishing strategies for attracting, retaining and managing its skilled employees. They are responding through systematic workforce planning, attractive recruitment arrangements, and attractive learning and development opportunities. A Charter of Rights is another element that helps to preserve employee value and aid in retention.

Another important consideration is the adverse impact of investigations on the mental wellbeing of respondents. Allegations can affect people significantly ... potentially triggering or exacerbating depression, anxiety, and suicide. Notably:

- In Australia, it is estimated that 45% of people will experience a mental health condition in their lifetime.

- In any one year, around 1 million Australian adults have depression, and over 2 million have anxiety.
- Suicide is the leading cause of death for Australians aged between 15 and 44, with around 3,000 people dying by suicide every year ... an average of 8 people every day.

Discussion

Features of a Charter of Rights

A well-founded Charter of Rights:

- Draws together in a single 'ready reckoner' document all the information that respondents to allegations of wrongdoing may require.
- Is written in an easy to understand 'plain English' style, so it meets the needs of its target audience.
- Is made available to persons being investigated as soon as they are notified of an allegation.
- Is readily available on the organisation's intranet site.

Why Have a Charter of Rights?

1. Provides clearly articulated investigation and support arrangements that help to:
 - Minimise lost productivity through an innocent employee's disengagement and de-motivation when there is no basis to allegations raised against them.
 - Avoid employee turnover costs which result from innocent employees who became disenchanted following unsubstantiated allegations of wrongdoing.
 - Preserve the mental wellbeing of employees who are the subject of an investigation.
2. Demonstrates commitment to proper handling of allegations of fraud or wrongdoing which consequently:
 - Avoids long-term detrimental impacts on an organisation and its employees as the process is consistent, well-defined, fair, equitable and effective.
 - Enhances an organisation's credibility when defending appeals against sanctions (for breaches of the code of conduct) through the courts and industrial relations commissions.
3. Provides a comprehensive and useful 'ready reckoner' for respondents that:
 - Demonstrates procedural fairness to the courts and other review processes where disciplinary action occurs.
 - Emphasises management's commitment to effective

Introducing a Charter of Rights for Employees Being Investigated

communications throughout the course of an investigation.

- Outlines how management manages workplace allegations and complaints.
- Articulates the communication channels and support available.

The Charter of Rights is intended to be used for 'routine' investigations of fraud, corruption and other wrongdoing within an organisation. It is not intended for situations where criminality is suspected or where law enforcement agencies are involved or likely to become involved.

Five-step process for Developing a Charter of Rights

Establishing a Charter of Rights involves a five step process, as illustrated.



Step 1 – Obtain Executive Buy-in

Before proceeding too far, it is useful to obtain at least preliminary executive buy-in so there is a senior executive to champion the proposal in the Boardroom.

Source appropriate statistical data within your organisation to justify the introduction of a charter of rights. To the extent possible, quantify the typical fraud losses for the organisation, the proportion of 'innocent' respondents to allegations, and the turnover costs. Then provide a suitable representation of the lost employee productivity, lost investment in employee training, and impact on employee wellbeing.

Achieve executive buy-in by combining the statistical data with the organisation's values and the insights outlined in this White Paper to produce a well-structured business case.

Step 2 - Determine Content of Charter

The Charter of Rights should be designed to suit the environment in which the organisation operates, and its values. A suggested design is illustrated in the next section, followed by comments on each of the suggested sections.

Step 3 – Consultation, Collaboration and Co-design

To ensure the acceptance of a Charter of Rights across the organisation, undertake its development through a process of consultation, collaboration and co-design involving all interested stakeholders. These will include fraud deterrence professionals, fraud examiners and investigators, internal

auditors, human resources specialists, industrial relations experts, and ideally employee representatives.

Each of the stakeholders will look at the charter through a slightly different lens, and genuine efforts should be made to reasonably satisfy each of their primary requirements and suggestions, without diminishing the value of the charter for its target audience – the respondents.

Through meaningful consultation, collaboration, and co-design you are more likely to produce a contemporary Charter of Rights that is relevant, useful and accepted.

Step 4 – Obtain Management Approval

If you have laid a solid foundation through step 1 and can demonstrate consultation, collaboration, and co-design (step 3), obtaining executive approval to the drafted Charter of Rights should be reasonably straightforward. The executive will take into consideration that you have incorporated the requirements and suggestions of a wide range of interested stakeholders.

Step 5 – Disseminate to Stakeholders

A communication strategy should be developed to accompany the executive submission seeking approval (step 4).

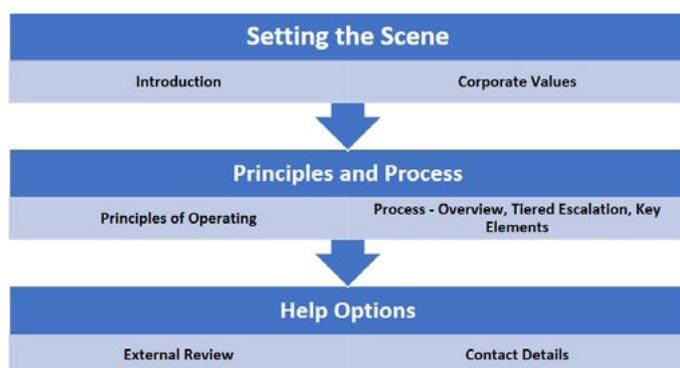
As a minimum, the communication strategy should indicate the means of disseminating the charter to:

- The range of representatives who might have dealings with respondents (eg professionals and managers involved in fraud deterrence, fraud examination and investigation, internal auditing, human resources, and industrial relations).
- Line management and the people who manage the external confidential employee helpline.
- Respondents when an investigation commences.
- All employees, by making the charter available on the organisation's intranet site, and raising awareness through the organisation's periodic employee newsletter.

Design

The design of the Charter of Rights will reflect the corporate values and the way in which the organisation operates. An example layout is shown on the following page.

Introducing a Charter of Rights for Employees Being Investigated



Content

- Outline why the charter has been introduced, how it will operate, how it supports a robust complaints and allegations system, and how it aligns to the organisation's values.
- Restate the values and particularly reinforce the values that relate to areas of integrity (for instance, being ethical, fair, professional, open, accountable, and lawful).
- Provide firm commitments and information on areas such as principles of natural justice, commitment to approach all allegations with an open mind and without prejudging them, undertaking to acknowledge and resolve all complaints expeditiously, commitment to informing the respondent where an allegation has been raised against them (unless exempted because of potential criminality).
- Provide a high-level overview diagram of the process, including the channels for submitting allegations, then the distinct phases for logging, assessing, investigating the allegations, and the final decision-making phase.
- Provide commentary on the tiered escalation process for handling allegations that reflects (at one end) how issues of a serious, sensitive or significant nature are addressed, and encourages (at the other end) the handling of low-level localised issues as close to the source as possible.
- Provide answers to common questions that respondents might have about the process for dealing with allegations, such as 'what can I expect if an allegation is made about me', 'are outcomes always reviewable', 'what does frivolous and vexatious mean', 'what happens when a process is finalised or resolved', 'what will I be told about the outcome of a process', 'what happens when a process is concluded'?
- Outline the options for sourcing an independent review of adverse investigation outcomes through both internal and external channels.

- Provide contact details of the human resource specialists who can give assistance, including details of an external confidential employee helpline (if one is available).

Whilst this article is focused on the benefits of introducing a Charter of Rights, it is important to reflect the value of organisations having in place a suitable fraud and corruption control plan!. An essential element of these plans is the underlying deterrence mechanisms, which might include elements such as effective integrated controls; perception of detection (ie an employee perceives they might get caught); employee education; contemporary fraud policies; analytical auditing procedures; surprise audits of vulnerable portable assets; and reporting programs.

Conclusion

Summary

The benefits of chief executives and other senior managers going 'undercover' in their organisations has been illustrated over recent years through a genre of reality television. These shows provide ideas on what is working well in the organisation and what is not.

The experience of Ron (in the case study) to being the respondent to allegations of wrongdoing ultimately proved to be hugely beneficial to the organisation and others in a similar predicament. He saw something that was clearly not working well, and championed significant change in the way the organisation articulated the corporate safeguards that were in place to protect the rights of alleged perpetrators.

The development of a Charter of Rights demonstrated that Ron's organisation was committed to providing procedural fairness to respondents. The safeguards in place for all respondents of fraud and other wrongdoing were clearly articulated and available to all employees through the organisation's intranet site.

Conclusion

A Charter of Rights for employees accused of wrongdoing can benefit employees and workplaces. Governance, risk management, compliance and audit professionals are encouraged to champion the development and roll-out of Charters of Rights within their organisations and organisations where they may have influence.

Introducing a Charter of Rights for Employees Being Investigated

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¹ AS 8001–2008 Fraud and Corruption Control, Standards Australia, 2008

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Preserving the Organization’s Moral Landscape, Turner B., Internal Auditor journal, Institute of Internal Auditors Global, October 2015, p 55

Boardroom conversations: addressing conflicts, innocent employees, and collaborative corruption reporting, Turner B., The Australian Public Sector Anti-Corruption Conference, November 2017

Terms and definitions used in this paper

Allegation	An accusation of fraud, corruption or other wrongdoing against an employee that needs to be proven (or otherwise) through investigation. Used in this White Paper to also reflect a serious wrongdoing ‘complaint’.
Organisation	Intended to be generic to cover entities that operate across the private, public and not-for-profit sectors. A single term has been used for simplicity.
Complainant	The person who has raised a complaint, allegation, or grievance. A ‘whistleblower’ (who has certain added protections under the law) is not distinguished from ‘complainant’ in this White Paper.
Deterrence	The discouragement of fraudulent activities because of the potential negative consequences.
Innocent employee	The respondent to an allegation where the matter has been resolved and where the allegation was unsubstantiated or incapable of determination, and/or the allegation was deemed to be frivolous or vexatious.
Respondent	The person against whom an allegation or complaint has been raised.

Purpose of White Papers

A White Paper is an authoritative report or guide that informs readers concisely about a complex issue and presents the issuing body’s philosophy on the matter. It is meant to help readers understand an issue, solve a problem, or make a decision.

Author’s Biography

Written by: Bruce Turner AM
CRMA, CGAP, CISA, CFE, PFIIA, FFin, FFA, FIPA, FIML, MAICD, JP

Bruce remains active as an audit and risk committee chair, company director, executive coach, mentor, and white ribbon ambassador. He has held board and independent audit committee roles over the last decade in 30 diverse organisations, including six years on the IIA–Australia Board to mid–2018.

His 40 years of practitioner and leadership experience in internal auditing across the globe traverses the energy, financial services (commercial, merchant and central banking), government, manufacturing, and transport sectors. Prior to his retirement in 2012, he held Chief Audit Executive roles at the State Rail Authority of NSW, Integral Energy Australia, and ultimately the Australian Taxation Office.

For much of the last 20 years Bruce has held roles involving the direct management and co-ordination of investigations, conducting high-profile investigations himself, determining disciplinary sanctions for wrongdoing (as part of executive disciplinary assessment panels), and Audit Committee oversight of the investigation activity. He has witnessed first-hand the detrimental effects of innocent employees struggling to cope with investigations that challenge their personal integrity.

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About the Institute of Internal Auditors–Australia

The Institute of Internal Auditors (IIA) is the global professional association for Internal Auditors, with global headquarters in the USA and affiliated Institutes and Chapters throughout the world including Australia.

As the chief advocate of the Internal Audit profession, the IIA serves as the profession’s international standard-setter, sole provider of globally accepted internal auditing certifications, and principal researcher and educator.

The IIA sets the bar for Internal Audit integrity and professionalism around the world with its ‘International Professional Practices Framework’ (IPPF), a collection of guidance that includes the ‘International Standards for the Professional Practice of Internal Auditing’ and the ‘Code of Ethics’.

IIA–Australia ensures its members and the profession as

Introducing a Charter of Rights for Employees Being Investigated

a whole are well-represented with decision-makers and influencers, and is extensively represented on a number of global committees and prominent working groups in Australia and internationally.

The IIA was established in 1941 and now has more than 200,000 members from 190 countries with hundreds of local area Chapters. Generally, members work in internal auditing, risk management, governance, internal control, information technology audit, education, and security.

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