

Policy Statement

Subject:	Whistleblower		
Policy Owner:	Board		
Functional Area:	Organisational		
UIN:	P1007		
Effective Date:	26/04/2022	Review Date:*	26/04/2024
Scope	<p>This Policy provides the framework for making reports about wrongdoing or suspected wrongdoing that are protected under whistleblower laws, by:</p> <ul style="list-style-type: none"> • encouraging and promoting a culture of openness and acceptance regarding the reporting of wrongdoing • helping to prevent wrongdoing • supporting CLA values and Code of Conduct • ensuring persons who report wrongdoing can do so without victimisation • properly managing reports of wrongdoing in a lawful, fair, consistent and timely manner • meeting CLA’s legal and regulatory obligations <p>All personnel are to make themselves familiar with the requirements of this Policy and ensure they comply with the behaviours and obligations outlined within it.</p> <p>This Policy does not apply to staff grievance or disputes between staff as these do not receive protection under whistleblower laws. They may receive protection under the Fair Work Act.</p> <p>This Policy does not apply to anonymous complaints about NDIS supports or services because whistleblower protections under the NDIS Act require the whistleblower to provide their name before making a whistleblower report. The Complaints Policy covers anonymous complaints about NDIS supports and services.</p>		

Policy

Commitment

At Community Living Australia (CLA) we are guided by our values, which are the foundation of how we behave and interact with each other, our clients, and stakeholders. Together our values reflect the priorities of the business and provide

guidance in our service delivery and decision-making.

We are committed to the highest standards of fair dealing, honesty and integrity in our business activities, and to the prevention, identification, reporting and responding to avoidable harm cause to, or deviation from the human rights for, people with disability.

CLA encourage the reporting of any instances of wrongdoing, which includes lapses in ethical responses to known issues of wrongdoing, and unlawful or illegal conduct within, or by someone connected to, CLA.

CLA is committed to providing a safe and confidential reporting process to report instances of wrongdoing, or failures in addressing wrongdoing, and to the promise of no victimisation so that whistleblowers may report without fear of intimidation, disadvantage or reprisal.

Definitions

CHO	means the Complaints Handling Officer responsible for managing the report of wrongdoing
Corporations Act	means the Corporations Act 2001 (Cth)
Eligible whistleblower	means any one of the following, as applicable: <ul style="list-style-type: none"> • For the purposes of Corporations Act and Taxation Administration Act, can be: <ul style="list-style-type: none"> ○ personnel (current or former) ○ relatives, dependents, and spouses of the above • For the purposes of the NDIS Act, can be any of the following who have provided their name before making a report: <ul style="list-style-type: none"> ○ personnel (current) ○ client receiving a support or service from us ○ relatives, independent advocate, nominee, or significant other
Fair Work Act	means the Fair Work Act 2009 (Cth)
Formal investigation	means a comprehensive inquiry to examine the facts of an allegation, complaint or report where there is a serious concern about wrongdoing, conduct infringing on the law, or where there is a serious risk of harm to a person
Good faith	means having a reasonable cause to believe the substance of the report is true and that the report is made without malice, not made purely to cause a nuisance, or not made with consideration of personal benefit by the whistleblower

Grievance	means an expression of dissatisfaction by a staff member about their employment, such as employment terms and conditions, work conditions or workload, workplace health and safety, or workplace bullying or harassment, and that does not concern or allege wrongdoing
NDIS Act	means the National Disability Insurance Scheme Act 2013 (Cth)
NDIS Code of Conduct	means the National Disability Insurance Scheme (Code of Conduct) Rules 2018
Personnel	means any of the following: <ul style="list-style-type: none"> • officers (including Board members) • employees • contractors and consultants (including employees of) • suppliers • volunteers and work experience students
Procedural fairness	means fairness in the system used to reach a decision. A procedurally fair whistleblower reporting system will ensure: <ul style="list-style-type: none"> • decisions are evidence based and free from bias • reasons for decisions are provided to whistleblowers • communication with whistleblowers is clear, and in a form that the whistleblower can best understand • whistleblowers are given an opportunity to respond to decisions and if applicable provide further information to support their report • there is a process for whistleblowers to seek a review of how the report was handled
Tax Administration Act	means the Taxation Administration Act 1953 (Cth)
Victimisation	means conduct or threats of conduct that: <ul style="list-style-type: none"> • harasses or intimidates a person • causes harm or injury to a person, including psychological harm • causes damage to a person’s property, reputation, or financial position • discriminates between an employee and other employees, or dismisses an employee because there is a belief or suspicion the person made or may have made a report, and this belief or suspicion is the reason or part of the reason for the conduct.
Whistleblower	means personnel or clients (including the relatives, dependants, and spouses) who make or wish to make a report concerning actual or suspected wrongdoing and who seek protection under whistleblower laws against victimisation

Whistleblower laws	<p>means the regimes contained in:</p> <ul style="list-style-type: none"> • Corporations Act - Part 9.4AAA • Tax Administration Act - Part IVD • NDIS Act - Part 3A, Division 7
Wrongdoing	<p>means conduct that:</p> <ul style="list-style-type: none"> • is dishonest, fraudulent, corrupt or an abuse of authority • breaches legislation or is otherwise unlawful • is unethical, in breach of CLA policies or code of conduct • may cause financial loss to CLA or be otherwise detrimental to CLA's interests • involves harassment, discrimination, victimisation or bullying (other than staff grievance) • endangers the environment or health or safety

Process

Whistleblowing is where a person makes a report, with protections against victimisation provided by whistleblower laws, concerning actual or suspected wrongdoing in CLA to the people who can, and should, do something about it.

CLA do not tolerate wrongdoing in our workplaces or business and service activities.

Personnel must:

- not engage in wrongdoing in CLA workplaces
- not engage in wrongdoing in conducting business or service activities on CLA's behalf
- must report any actual or suspected wrongdoing in accordance with this Policy
- must cooperate with any investigation undertaken under this Policy or as otherwise required by law, and
- must not victimise a whistleblower as a consequence of a report

CLA will:

- establish and communicate accessible tools and processes to allow people to report concerns about wrongdoing without fear of victimisation
- ensure all personnel are aware of the protections available under the whistleblower laws and provide those protections when applicable
- promote an environment where people feel confident, they can raise concerns about wrongdoing and make reports about wrongdoing; and that those reports are taken seriously, without fear of victimisation
- where a report is received,

- respond promptly and fairly
- uphold people’s right to report anonymously
- protect and support the dignity, wellbeing, and reputation of anyone who reports on the basis of reasonable grounds for suspecting wrongdoing
- maintain the confidentiality of people reporting wrongdoing and everyone involved in the report
- provide appropriate support and protection to everyone involved in the report, which may include assistance for clients to connect with an advocate where a formal or informal decision maker is not available
- protect whistleblowers from victimisation
- assess the report is made in good faith
- appropriately manage any real or perceived conflicts of interest
- conduct a formal investigation for all good faith reports

Making a report

Making a report about wrongdoing or suspected wrongdoing under the whistleblower laws may be made to eligible recipients - a member of the Senior Executive Team, the Chief Executive, and the Chair of the Board of Directors or Community Living Australia’s external auditor as set out in Table 1. Appendix 1 provides the direct contact details for each.

Anonymous reports can be made.

Note: Whistleblower protections do not extend to reports made anonymously about NDIS supports or services because whistleblower protections under the NDIS Act require the whistleblower to provide their name before making a whistleblower report.

Table 1

Eligible recipients	Description	Complaints Handling Officer (CHO)	Investigation method
A member of the Senior Executive Team	For reports involving personnel who are not members of the Senior Executive Team	A member of the Senior Executive Team	Formal External or Internal
(unless the matter is about a member of the Senior Executive Team, in which case the Chair of the Board)	involving allegations of violence, abuse, neglect or exploitation of a client	Support from the Manager Quality and Safeguarding (or alternate if there is a conflict)	

Eligible recipients	Description	Complaints Handling Officer (CHO)	Investigation method
	involving or potentially involving workplace matters	Support from the Manager People and Culture (or alternate if there is a conflict)	
Chair of the Board (unless the matter relates to the Chair of the Board, in which case the external auditor or Chief Executive)	For reports involving members of the Senior Executive or Chief Executive		Formal External or Internal
	involving allegations of violence, abuse, neglect or exploitation of a client	with support from the Manager Quality and Safeguarding (or alternate if there is a conflict)	
	involving or potentially involving workplace matters	with support from the Manager People and Culture (or alternate if there is a conflict)	
Community Living Australia's external auditors (unless the matter involves allegations of violence, abuse, neglect or exploitation of a client; in which case the Chief Executive)	For reports involving a member of the Board, Chair of the Board or Company Secretary	External Auditor Support from the Manager People and Culture (or alternate if there is a conflict)	Formal External only
Chief Executive	For reports involving a member of the Board, Chair of the Board or Company Secretary	Chief Executive Support from the Manager Quality and Safeguarding (or alternate if there is a conflict)	
	involving allegations of violence, abuse, neglect or exploitation of a client		

If any whistleblower is uncomfortable making a report to CLA, or unhappy with how CLA have responded to a report already made, they can make a report to:

- [Australian Securities and Investment Commission](#) for whistleblower laws under the Corporations Act - Part 9.4AAA
- [Australian Tax Office](#) for whistleblower laws under the Tax Administration Act - Part IVD

- [NDIS Commission](#) for whistleblower laws under the NDIS Act - Part 3A, Division 7

Investigation

All reports of wrongdoing or suspected wrongdoing made under this Policy will be assessed by the Complaints Handling Officer (CHO) to:

- identify and manage any real, perceived or potential conflicts of interest
- determine whether the report is made in good faith

A formal investigation will be conducted for all reports assessed as made in good faith.

The formal investigation will be conducted in an objective and fair manner, and as is reasonable and appropriate having regard to the nature of the report.

Where an anonymous report is made, the CHO will conduct the formal investigation based on the information provided in the report. Anonymity may sometimes prevent the CHO from progressing a formal investigation where the CHO is unable to obtain additional information from the whistleblower.

The CHO will determine whether the formal investigation will be conducted by an internal or external investigator, having regard to the nature of the report.

The investigator will conduct the formal investigation as soon as practicable and will ensure it is fair and independent from any person to whom the report relates, ensuring that every person subject to the formal investigation be given an opportunity to respond to allegations before findings are made.

Where a client is implicated in a report, the CHO must ensure that client and their informal and formal decision makers are informed in a timely manner.

For support during the investigation process, the CHO must connect affected clients, where the client does not have a formal or informal decision maker and one is required, with:

- an advocacy service, and
- a counselling service where the complaint involves or alleges violence or abuse, giving appropriate consideration to possible past trauma and accumulative harm.

The CHO will take any necessary actions resulting from the formal investigation and provide appropriate feedback to the whistleblower.

The details of the formal investigation, including the findings and recommendations will be reported to the Board, via the Risk and Compliance Committee, on a confidential and anonymous basis.

Protections

Protection is available to eligible whistleblowers who report wrongdoing, where the report is made with reasonable grounds to believe it is true, and where it is reported to an eligible recipient (a person lawfully able to receive the report).

A whistleblower shall provide information to assist the formal investigation into the wrongdoing or suspected wrongdoing reported.

Making a report may not protect a whistleblower from the consequences flowing from involvement in the wrongdoing itself. A whistleblower's liability for their own conduct is not affected by their report of the wrongdoing. However, active cooperation in the formal investigation, an admission and remorse may be taken into account when considering disciplinary or other actions.

Even though a whistleblower may be implicated in the wrongdoing, they must not be subjected to victimisation.

Confidentiality

Community Living Australia will protect and not disclose a whistleblower's identity unless:

- It is necessary to further a formal investigation and the whistleblower consents to the disclosure, or
- the disclosure is required or authorised by law.

When a report is formally investigated, it may be necessary to reveal its substance to people such as other personnel, external persons involved in the formal investigation process and, in appropriate circumstance, law enforcement agencies.

It will be necessary to disclose the facts and substance of a report about wrongdoing or suspected wrongdoing to a person who may be the subject of the report because it is essential that procedural fairness prevails. Although the confidentiality of the whistleblower's identity shall be maintained, in some circumstances, it may be obvious to a person who is the subject of a report.

CLA will take all reasonable precautions to store any records relating to a report of wrongdoing or suspected wrongdoing and to restrict access to authorised persons.

Unauthorised disclosure of information that could prejudice confidentiality and identify a whistleblower may result in disciplinary action and referral to law enforcement agencies.

NDIS Practice Standards

Referenced from NDIS Practice Standards and Quality Indicators – Jan 2020 version 3

Risk Management

Risks to participants, workers and the provider are identified and managed.

Governance and Operational Management

Each participant's support is overseen by robust governance and operational management systems relevant (proportionate) to the size and scale of the provider, and the scope and complexity of supports delivered.

Related Documents

- [NDIS Practice Standards and Quality Indicators – Nov 2021 version 4](#)
- [Corporations Act 2001](#)
- [National Disability Insurance Scheme Act 2013](#)
- [Taxation Administration Act 1996](#)
- [NDIS \(Code of Conduct\) Rules 2018](#)
- [Complaints Policy](#)
- [Violence, Abuse, Neglect and Exploitation towards People with Disability Policy](#)
- [Privacy Policy](#)
- [Code of Conduct](#)
- [Disciplinary Action Operating Procedure](#)

Approved by the Chief Executive	Date	Signature
Mark Kulinski	26/04/2022	