

Whistleblowing Operating Procedure

Subject:	Title:		
Procedure Owner:	Director, People and Culture		
Functional Area:	Executive		
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Effective Date:	19 th April 2023	Review Date:*	19 th April 2025
Related Policy:	Whistleblowing Policy		
Scope:	This procedure outlines Community Living Australia’s processes for supporting employees, past employees, clients, their relatives, dependents or spouses to speak up about misconduct within Community Living Australia (CLA).		

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1 Definitions

Detriment	<p>A person may be causing you detriment if they:</p> <ul style="list-style-type: none"> • dismiss you from your employment; • injure you in your employment; • alter your position or duties to your disadvantage; • discriminate between you and other employees of the same employer; • harass or intimidate you; • harm or injure you, including causing you psychological harm; • damage your property; • damage your reputation; • damage your business or financial position; or • cause you any other damage.
Discloser	The person who reports wrongdoing
Disclosee	The person who is subject to a report of wrongdoing.
Disclosure	A report of misconduct or wrongdoing.
Protected Disclosure	Under the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act (2019) protections apply to disclosures which have been disclosed by someone who has reasonable grounds to suspect that the information concerns

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misconduct, or an improper state of affairs or circumstances;
and the disclosure relates to conduct that:

- is an offence against, or contravention of, a range of specified banking, finance, corporate and insurance legislation;
- is an offence against any other law of the Commonwealth that is punishable by imprisonment of 12 months or more; or
- represents a danger to the public or the financial system.

Eligible Recipient A person who can receive a whistleblower report. This includes:

- A company officer or director (including the Company Secretary);
- A senior manager (including any member of the Senior Leadership teams);
- An auditor or actuary;
- Regulators;
- Anyone authorised by Community Living Australia to receive disclosures.

Victimisation Actual or threatened detriment.

Whistleblowing When a discloser including an employee, past employee, customer, their relative, dependent or spouse speaks up about wrongdoing within, or by, Community Living Australia.

Whistleblowing Protection

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Officer

An employee who is appointed by the Chief Executive Officer for the purpose of receiving reports of wrongdoing. They have had appropriate training to advise and support disclosers.

Wrongdoing

Misconduct, behaviour that does not align with CLA's organisational values, a breach of the NDIS Quality and Safeguarding Commission's or CLA's Code of Conduct and / or matters for which protections apply under the [Treasury Laws Amendment](#) (Enhancing Whistleblower Protections) Act (2019).

2 Who can make a Whistleblower Report?

2.1 The following groups of people, past or current, can make a whistleblower report:

- employees and officers;
- contractors, Consultants, suppliers and their employees;
- volunteers and work experience students;
- directors and associates of the entity or related entity; and
- spouses or relatives of any of the above

3 Internal Reporting of Wrongdoing

3.1 **Line Management** In the first instance, try to raise concerns with your immediate line manager. There may be exceptional circumstances when you do not feel comfortable doing this. In such cases, raise the concern with another manager, either a person outside their reporting line or a more senior manager.

3.2 **Whistleblowing Protection Officers (WPO)** The discloser may directly contact the WPO if they:

- do not wish to report through the management line. For example, they perceive a conflict of interest;
- have notified a manager or other appropriate employee but does not feel

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they have responded to the report adequately; or

- are concerned about negative repercussions.

3.3 **Stopline whistleblowing services** CLA has contracted Stopline's Whistleblower Hotline Service. Disclosures may be made 24 hours a day, seven days a week, in a number of ways, including phone, email, post, or directly via the Stopline portal. The Stopline portal contains all information about how to make a report through Stopline. Disclosers can access the Stopline portal through the CLA website or the CLA Our Space intranet.

3.4 Disclosers can make disclosures via Stopline with full or partial anonymity if they wish.

3.5 Stopline will refer the matter to CLA's WPO's, who will respond to and manage the disclosure.

3.6 Disclosers can request that any of the WPO's are not notified.

3.7 Upon receiving the disclosure the WPO's will:

- promptly review the disclosure. They will consider whether whistleblowing is the most appropriate management process. For example, reports of staff grievances will be managed via the grievance process. They will also assess and control the risk of detriment;
- decide upon the most appropriate management process. For example, a formal investigation;
- coordinate and oversee the management of the disclosure;
- ensure the discloser is protected from victimisation;
- advise the discloser of the progress of the matters when appropriate to do so;
- take all necessary steps to ensure the identify of the discloser and disclose are kept confidential.

4 External Report of Wrongdoing

4.1 There may be circumstances where you may choose to report to other external agencies:

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- [Australian Securities and Investment Commission;](#)
- [Australian Tax Office;](#)
- [NDIS Quality and Safeguards Commission;](#)
- [The police;](#)
- [The National Disability Abuse and Neglect Hotline.](#)

5 Concerning disclosures made to legal practitioner

- 5.1 If you make a disclosure to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of Part 9.4 of the Act (which includes the whistleblower protections and confidentiality of a whistleblower's identity) the disclosure will be protected under the Act.

6 Concerning public interest disclosures

- 6.1 You can make a disclosure in the public interest to a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a journalist if:
- you have previously made a disclosure of that misconduct; and
 - at least 90 days have passed since the previous disclosure was made; and
 - you have reasonable grounds to believe that action is being, or has been, taken to address the misconduct to which the previous disclosure related; and
 - you have reasonable grounds to believe that making a further disclosure of the misconduct would be in the public interest; and
 - after the end of the 90 day period you give the person to whom you made the previous disclosure a written notification that:
 - includes sufficient information to identify the previous disclosure; and
 - states that they intend to make a public interest disclosure; and

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- the public interest disclosure is made to:
 - a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
 - a journalist; and
 - the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient of the misconduct or the improper state of affairs or circumstances.

7 Concerning emergency disclosures

7.1 You may also make an emergency disclosure to a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a journalist if:

- you previously made a disclosure that qualifies for protection under the Act (Part 9.4 under subsection 1317AA(1)); and
- you have reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and
- you give the body to which the previous disclosure was made a written notification that:
 - includes sufficient information to identify the previous disclosure; and
 - state that you intend to make an emergency disclosure; and
 - the emergency disclosure is made to:
 - a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
 - a journalist; and
 - the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient of the substantial and imminent danger.

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8 *What immunities are available to a discloser?*

8.1 Anyone who makes a disclosure:

- with reasonable grounds for suspecting wrongdoing has or may occur; and
- has not engaged in serious misconduct or illegal conduct relating to the disclosure will be provided with immunity from disciplinary action.

8.2 If you make a disclosure that qualifies for protection under the Act:

- you are not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and
- no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against you on the basis of the disclosure; and
- the information is not admissible in evidence against the whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

Note: Except as provided for by the Act, it does not prevent a whistleblower being subject to any civil, criminal or administrative liability for conduct of the whistleblower that is revealed by the disclosure.

9 *Legal protections for disclosures*

9.1 Disclosers who make a [protected disclosure](#) have the following legal protections available to them:

Protection of a Discloser's Identity.

9.2 CLA has a legal obligation to protect the confidentiality of a discloser's identity.

9.3 A person cannot disclose the identity of a discloser or information that is likely to lead to the identification of the discloser unless a person discloses the identity of a discloser to:

- ASIC, ACNC or a member of the Australia Federal Police;
- a lawyer (to obtain legal advice or legal representation);

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- a person or body prescribed by regulations; or
- with the consent of the discloser.

9.4 A person can disclose the information contained in the disclosure with or without the discloser's consent if:

- the information doesn't include the discloser's identity;
- CLA has taken all reasonable steps to reduce the risk that the discloser will be identified from the information; and
- it is reasonably necessary for investigating issues mentioned in the disclosure

9.5 It is illegal for a person to identify a discloser or disclose information that is likely to lead to the identification of the discloser.

- if this has occurred, you can lodge a complaint for breach of confidentiality via Stopleveline.
- a discloser may also lodge a complaint with a regulator for investigation.

Anonymity.

9.6 People who make a Protected Disclosure can make a disclosure anonymously and still be protected by the Act.

9.7 A person who makes a protected disclosure discloser can choose to remain anonymous:

- whilst making a disclosure;
- over the course of the investigation;
- after the investigation is finalized

9.8 A discloser can refuse to answer any questions which could reveal their identity at any time.

9.9 If a disclosure is received from an email address where a person's identity cannot be determined, it will be treated as an anonymous disclosure. Other mechanisms for protecting anonymity may include adopting a pseudonym.

Protection from detrimental acts or omissions

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9.10 A person cannot engage in conduct that causes detriment to a discloser (or another person) in relation to a disclosure if:

- the person believes or suspects that the discloser made, may have made, proposes to make or could make a valid disclosure; and
- the belief or suspicion is the reason (whole or in part) for the conduct.

9.11 Threats, (whether express or implied) to cause detriment to a discloser (or another person) is not permitted.

9.12 Detrimental conduct does not include:

- administrative action which is reasonable to protect the discloser from detriment;
- management action to manage a discloser's unsatisfactory work performance.

9.13 If a discloser is subject to administrative or management action, they will be informed of the reasons for taking this action.

Compensation and other remedies

9.14 A discloser (or any other worker or person) can seek compensation and other remedies through the courts if:

- they suffer loss, damage or injury because of a disclosure;
- CLA failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

9.15 If a person wishes to proceed with seeking compensation and/or other remedies from the courts independent legal advice should be sought.

Civil, criminal and administrative liability protection.

9.16 A discloser is protected from the below in regards to their disclosure:

- Civil liability. Such as legal action against a discloser for breach of an employment contract or duty of confidentiality
- Criminal liability. Such as attempted prosecution of the discloser for unlawfully releasing information. This does not include protections for making a false disclosure

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9.17 These protections do not grant immunity for misconduct by the discloser which is revealed throughout the disclosure procedure.

10 Support and practical protection for disclosures

10.1 CLA is committed to supporting disclosers and protecting disclosers from detriment throughout the disclosure process.

Protection of a disclosers identity

Receiving a disclosure

- Personal information or reference to the discloser witnessing an event may be redacted where appropriate ;
- The discloser may be referred to with a pseudonym;
- Where appropriate, CLA may contact the discloser to help identify certain aspects of their disclosure that could inadvertently identify them;
- Disclosures will be handled and investigated by appropriately skilled staff.

Record keeping

- All paper and electronic documents and other materials relating to disclosures will be stored securely;
- Access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure;
- Only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a disclosers identity (subject to the disclosers consent) or information that is likely to lead to the identification of the discloser;
- Communication and documents relating to the investigation of a disclosure will not be sent to an email address or printed that can be accessed by other staff;
- Each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements.

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Protection from detrimental acts or omissions

Detriment in the workplace

- Assessing the risk of detriment against a discloser and other persons once a disclosure is received;
- Actions to protect a discloser from potential detriment may include:
 - allowing a discloser to perform their duties at a different location or reassigning a discloser to a different role at the same level;
 - ensuring that managers involved in managing the disclosure are aware of the need to manage conflicts, ensure fairness and assess the risk of harm to the discloser;
 - a discloser can lodge a grievance with Stopline if they have suffered detriment.

Personal Wellbeing

- In some instances personal wellbeing services may be offered to a discloser, or those subject to detriment including accessing the EAP service, debriefing and strategies to support a discloser to minimise stress or other challenges resulting from a disclosure.

10.2 If personal detriment has occurred CLA may take disciplinary action to individuals who contributed to the detriment.

11 What will CLA do with the disclosure?

11.1 The WPO's have been appointed by CLA to receive the disclosure directly from you or from Stopline Whistleblowing services.

Investigation of the disclosure

11.2 The WPO's will carefully assess and use the information provided in the disclosure to decide the best action to take, including whether an investigation is required and, if so, determine the appropriate investigation process, including:

- the nature and scope of the investigation;

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- who will conduct the investigation and whether that person should be external to our organisation;
- the nature of any technical, financial or legal advice that may be required; and
- a timeframe for the investigation (having regard to the level of risk).

How will the investigation be conducted?

11.3 The investigation will be conducted in a constructive, impartial and lawful way according to the principles of natural justice and procedural fairness and all efforts will be made to meet investigation best practices.

11.4 The Investigator will:

- gather information, material and documentation concerning the disclosure as quickly as possible. (This may involve taking steps to protect or preserve documents, materials and equipment);
- focus on the substance of the disclosure and will not focus on the motives of the discloser;
- not assume that disclosures about conduct or behaviour that appear to have had a personal impact on a discloser are somehow less serious. The discloser's experience may indicate a larger or systemic issue;
- take a statement or record of interview and or tape formal interviews with witnesses as required (Where the discloser wishes to remain anonymous and does not wish to make a statement they will not be asked to do so);
- keep information gathered in the investigation securely;
- take all reasonable steps to protect the identity of the discloser. Where disclosure of the identity of the discloser cannot be avoided due to the nature of the allegations, the investigator will first gain the consent of the discloser before providing identifying information to any additional persons; and
- complete the investigation and provide a summary their findings as soon as is reasonably practical.

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Investigation Summary

11.5 At the conclusion of the investigation, the investigator will provide a written summary to the WPO's including:

- a finding of all relevant facts;
- whether the disclosure is proven, not proven or otherwise; and
- recommendation/s, when requested to do so, as to any action that may be taken in respect of the findings.

11.6 CLA will use the report to determine the action (if any) to be taken, including disciplinary action.

11.7 The findings will be communicated to the relevant parties involved to the extent that it is legally permissible and appropriate to do so.

12 What are the consequences of making a false disclosure?

12.1 Anyone who makes a disclosure knowing it to be false or misleading may be subject to disciplinary action, including dismissal. The disciplinary action will depend on the severity, nature and circumstance of the false disclosure.

12.2 We do not wish to deter staff from making disclosures. In cases where disclosers have some information leading to a suspicion, but not all the details, staff are encouraged to speak up and report the misconduct and will not face disciplinary action in those circumstances.

13 How will this policy be made available to officers and employees of our organisation?

13.1 CLA makes the policy and procedure available to employees and officers by:

- posting the policy on the staff intranet or other communication platform; and
- incorporating the policy and procedure in employee induction information packs and training for new starters.

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14 Accountability & Continuous Improvement

- 14.1 A CLA delegate or delegates will review this procedure periodically and training may be recommended by the Whistleblowing Protection Officers or the Board of as appropriate.
- 14.2 Key themes of disclosures provided to the board to show patterns of behaviour and systemic issues. All information will not contain personal information.

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15 Relevant Resources

Legislation, external requirements and oversight bodies

[Corporations Act, 2001](#) (Cth)

[National Disability Insurance Scheme Act, 2013](#) (Cth)

[NDIS \(Code of Conduct\) Rules 2018](#)

[NDIS Practice Standards and Quality Indicators – Nov 2021 version 4](#) (Risk Management and Governance and Operational Management)

[Taxation Administration Act, 1996](#) (SA)

[Treasury Laws Amendment Act](#) (Enhancing Whistleblower Protections(2019) (Cth)

Supporting Quality Management System policies, procedures and/or forms

[Code of Conduct](#)

[Complaints Policy](#)

[Disciplinary Action Operating Procedure](#)

[Investigations Procedure](#)

[Privacy Policy](#)

[Violence, Abuse, Neglect and Exploitation towards People with Disability Policy](#)

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