

# ACS-Whistleblower Protection Policy and Process

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## Policy Statement

Aboriginal Community Services (ACS) recognises the benefits that whistleblowers can bring to organisations, including creating an open culture, preventing issues from escalating and uncovering misconduct. ACS is committed to implementing and maintaining a whistleblower system and policy in accordance with requirements of the Aged Care Act 2024 (Cth) and the Corporations Act 2001 (Cth) and will manage disclosures that qualify for protection under these Acts and provide protection for people who disclose wrongdoings.

## Purpose

In line with the rules of the Aged Care Act (and in supporting the Corporations Act), the purpose of the whistleblower protection policy and process is:

- (a) to promote quality care and the safety of individuals to whom ACS delivers funded aged care services by ensuring the whistleblower system facilitates certain disclosures of information by individuals without fear of persecution, retribution or personal detriment; and
- (b) to ensure that the confidentiality of such disclosures is maintained and, where relevant, the anonymity of the individual making the disclosure, and any other specified individual, is protected; and
- (c) to ensure that the ACS whistleblower system acknowledges, assesses, manages and responds to concerns raised in such disclosures in a fair, transparent, accessible, safe, culturally safe and timely manner; and
- (d) to ensure that such disclosures contribute to the continuous improvement of the provider's delivery of funded aged care services; and
- (e) to ensure that aged care workers and any other persons are encouraged and supported to raise concerns about the provider's delivery of funded aged care services.

## Scope

Anyone can be a whistleblower and qualify for protection in aged care including individuals receiving funded aged care services, aged care workers (staff), family members and supporters, volunteers, responsible person, associated providers and any other stakeholder.

The whistleblower can disclose information if they have reasonable grounds to suspect that either the Aged Care Act or the Corporations Act has been breached. Personal or work related grievances do not fall under the scope of this policy and process and are to be addressed as per the ACS-Grievance Policy.

ACS encourages anyone who is aware of wrongdoing to speak up, however deliberate false reporting is discouraged.

Examples of whistleblower disclosures under the Aged Care Act include, abuse, neglect, fraudulent activity, safety violations, medication errors and any contravention or suspected contravention of the Act.

Examples of whistleblower disclosures under the Corporations Act include Fraudulent activity, bribery, breach of director duties, money laundering and corporate corruption.

## Roles and responsibilities

### Whistleblower Officer (WO)

- Manage and implement this policy and process
- Act as the ACS contact for whistleblowing disclosures
- Review the whistleblower system at least annually
- Gather documents and interview witnesses
- Prepare a report on findings and recommendations

### Management

- Implement and comply with this policy and process
- Remind staff of their responsibilities and manage any conflict in relation to this policy and process
- Ensure that the identity, or information that could lead to identity of any individual or group of individuals who make a disclosure under this policy and process remains confidential and is not disclosed unless authorised.
- Ensure no person is victimised for making or intending to make a disclosure under this policy.

### Staff

- Comply with the requirements of this policy and process
- Ensure that the identity, or information that could lead to identity of any individual or group of individuals who make a disclosure under this policy and process remains confidential and is not disclosed unless authorised
- Ensure no person is victimised for making or intending to make a disclosure under this policy
- Complete training as required

## Definitions

Commission-refers to the Aged Care Quality and Safety Commission

Department-refers to the Department of Health, Disability and Ageing

Detriment-can include:

- dismissal from employment
- altering a position or duties to disadvantage a person
- discriminate, harass or intimidate
- harm or injure
- damage to persons property
- damage to reputation






Discloser- a person who makes information know, reveals a secret or allows something to be seen or understood

Disclosure-a report or communication made by anyone who has reasonable grounds to suspect that a provider or its personnel may have contravened a provision of the Aged Care Act 2024 or related responsibilities.

Entity-any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- any other unincorporated association that has a governing body

Recipient- a person or authority that a whistleblower can report wrongdoing to in order to access legal protections and rights. Governing regulations for this policy

-  Aged Care Act 2024
-  Corporations Act 2001 (Cth)
-  Outcome 2.6a - Complaints and feedback management for aged care workers
-  Outcome 2.6b - Complaints and feedback management for individuals
-  Whistleblowers Protection Act 2019

#### Documents relevant to this policy

-  ACS-Whistleblower Disclosure Form

#### Managing business unit for this policy

-  Corporate

## Process

The ACS whistleblower system is designed to support Whistleblower Protections under the Aged Care Act and Corporations Act.

ACS encourages all stakeholders to make a disclosure without fear of negative consequences and actively promotes the ACS whistleblower system by:

- training staff in the importance of feedback, complaints and disclosures
- providing monthly communication to individuals receiving funded aged care, staff (including associated providers) and responsible persons that feedback, complaints and disclosures that qualify for protection under the Act are welcome
- making freely available a copy of the Whistleblower policy on the ACS website
- discussing with individuals receiving funded aged care that feedback, complaints and disclosures that qualify for protection under the Act are welcome

A qualifying disclosure arises when a discloser has reasonable grounds to suspect that information indicates a potential breach of any provision of the Act by any entity. The disclosure, which can be anonymous, must be made to an eligible recipient. Disclosures that are not about “disclosable matters” do not qualify for protection.

If someone makes a protected whistleblower disclosure, they can elect to have it handled like a regular complaint or feedback. If this is the case ACS will manage the disclosure under the ACS feedback and complaint system. (See ACS-Feedback and Complaints Policy and Process) The person will therefore lose their protections under the Act. At any time in the process, the person is able to change their mind and have it treated under whistleblower protections.

Disclosures should include as much information and evidence as possible including:

- Name, job title and location of the subject of the disclosure
- Details of the alleged improper conduct
- How the whistleblower became aware of the improper conduct
- Possible witnesses
- Any other information that may be useful to support the allegation

#### Complaint vs whistleblower disclosure

A complaint is made to express dissatisfaction with the quality of care, service or conditions within an aged care service. They may not need to establish wrongdoing or a breach of the Act, but rather concern or dissatisfaction.

A whistleblower disclosure is made to report serious misconduct, unethical behaviour or breaches of the Aged Care act 2024 or Corporations Act 2001.

### ACS receipt of disclosures

ACS has several ways for people to make a disclosure under whistleblower protections allowing for anonymity, confidentiality, security and the ability to be made out of hours.

- 1) ACS website-any time of the day, can be made anonymously (using the online feedback and complaints form at <https://aboriginalcs.org.au/>).
- 2) Phone- contact the ACS Whistleblower officer on (08) 8353 9014 or Extension 114
- 3) Email- contact the ACS Whistleblower officer at [Whistle.Blower@aboriginalcs.org.au](mailto:Whistle.Blower@aboriginalcs.org.au)
- 4) Face to face-directly to an ACS staff member or associate provider during service provision. They will then seek consent to be able to provide the disclosers identity to the ACS whistleblower officer (See Appendix 1 Whistleblower System Flowchart)

Once a disclosure has been received, ACS will acknowledge receipt of the report in a timely manner and the investigation process will begin. This may involve collecting evidence, interviewing witnesses and analysis facts to determine whether misconduct has occurred. The investigation will be impartial, confidential and compliant to the Act and be conducted by the Whistleblower Officer. For disclosures of a criminal nature ACS is obliged to contact external bodies (See ACS-Incident Management Policy and Process)

The Whistleblower will be provided information about their rights and the expected process for the disclosure including involvement that may be required. Immediate supports will be put in place to maintain anonymity, facilitate access to counselling, advocacy support or other supports and records will be maintained securely.

### Disclosures qualifying for protection under the Act

A disclosure of information by a discloser qualifies for protection if:

(a) the disclosure is made to one of the following:

- an Appointed Commissioner or a member of the staff of the Commission;
- the System Governor, or an official of the Department;
- directly to an aged care provider
- a responsible person of an aged care provider
- an aged care worker
- a police officer;
- an independent aged care advocate; and

(b) the disclosure is made orally or in writing (and whether made anonymously or not); and

(c) the discloser has reasonable grounds to suspect that the information indicates that an entity may have contravened a provision of this Act.

A disclosure must be made in good faith and not be motivated solely by personal grievance or made without reasonable basis. Disclosures may relate to misconduct, neglect, abuse, non-compliance or any act or omission that may pose a risk to the safety of individuals receiving funded aged care services.

### Protection from retaliation

If a person makes a disclosure that qualifies for protection under the Act:

- they can not be dismissed or fired, harassed, discriminated against, treated differently, victimised or treated unfairly.

- the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure
- they can not have contractual or other remedy or right brought against them

However, if the person who made the disclosure was also involved in the wrongdoing, they're not exempt from any legal action because of their disclosure. If someone makes a disclosure and is also part of a contract, the contract cannot be terminated just because that disclosure might be seen as breaking the contract.

#### Managing disclosures that qualify for protection under the Act

If an individual makes a disclosure that qualifies for protection under the Act to ACS or a responsible person or staff member of ACS, ACS will:

(a) manage the disclosure in accordance with the whistleblower system (See Appendix 1: Whistleblower System Flowchart); and

(b) as soon as practicable after the disclosure is made, take appropriate action in relation to the disclosure; and

(c) support:

- the individual who made the disclosure; and
- any other individual, or an entity, that employs or is otherwise associated with the first individual, and to which detriment might be caused, or a threat of detriment might be made, because of the disclosure;

including prioritising physical and psychological wellbeing and providing access to counselling, support groups or Employee Assistance Programs (EAP) and offering alternative work arrangements if required

and

(d) ensure fair treatment of any responsible person or staff member of ACS who is mentioned in the disclosure or to whom the disclosure relates.

#### Preserving anonymity

If an individual makes a disclosure to ACS (the recipient) that qualifies for protection under the Act and the individual requests that the individual, or any other individual named in the request, remain anonymous ACS will take such steps as are reasonable in the circumstances to preserve the anonymity of individuals named in the request.

However, ACS may disclose the name of an individual if it is necessary to lessen or prevent a serious threat to the health, safety or well-being of another individual. If the serious threat could be lessened without naming the individual, then ACS will do so.

#### Confidentiality of identity of disclosers

A discloser's identity will be treated confidentially, even when the person doesn't choose to be anonymous. Entities will not share the person's identity or anything that can lead to revealing their identity, unless authorised to do so under the Act. ACS will ensure as far as reasonably practicable, compliance recognising there are penalties for contravening confidentiality of identity of disclosers under certain circumstances.

#### *Protecting discloser identities*

If an individual makes a disclosure that qualifies for protection under the Act to a person (the **recipient**) who is:

(a) a staff member of ACS; or

(b) a responsible person of ACS;

ACS will take reasonable measures to ensure that the recipient does not disclose the fact that the person was the maker of the disclosure, except as authorised. This will be done by training staff and responsible persons and reminding them of their obligations.

This obligation covers not only compliance by ACS staff and responsible persons but extends to associated providers of ACS, and will be managed via contractual agreements and training support.

### Victimisation

ACS will ensure as far as reasonably practicable the prohibition of victimisation for an individual who makes a disclosure that qualifies for protection. ACS will not conduct themselves in a way that causes detriment to an individual or an associate to an individual who may have or intends to make a disclosure that qualifies for protection under the Act.

ACS will not make threats or harm individuals and associates with the intent to cause detriment, where an individual has or may have or intends to make a disclosure that qualifies for protection under the Act. For this purpose a threat may be expressed or implied, or conditional or unconditional.

### Investigation

Where a disclosure was made anonymously, an investigation can still occur with the understanding that there may be limitations to being able to respond to the discloser.

- ACA will assign an appropriately qualified and skilled person to undertake the investigation, who will be responsible for:
  - fully understanding the allegation
  - obtaining any relevant written evidence
  - contacting and interviewing all the relevant parties
  - recording actions taken to form an audit trail
  - documenting critical findings and decisions made during the course of the investigation
  - preparing a report outlining their investigation, the conclusion they have reached and why they have reached this conclusion
  - determining whether the report will be provided to senior management or the Governing Body.
- Seek advice and support (e.g. from Ageing Australia's Employment Relations Service) such as if a person has been assigned to undertake a whistleblower investigation and holds any concern with their capability or impartiality to undertake the investigation.
- Undertake investigation of disclosure to determine if there is sufficient evidence to substantiate disclosure.
- Ensure investigation is undertaken in a fair and objective manner with the following principles adhered to:
  - maintaining confidentiality of information
  - addressing any issues promptly
  - making all decisions based on the relevant evidence collected
  - acting in an unbiased manner.
- Gather relevant evidence, review documents and interview stakeholders to gain a factual understanding of the matter. Depending on the nature of the disclosure, these may include review of various records including:
  - Individuals' records, such as progress notes, assessments and care plans
  - related incidents and feedback records
  - decision-making processes and evidence related to service provision
  - worker records, including training records
  - ACS policies and processes
  - communication platforms
  - footage (CCTV)
  - any other information available and relevant to the disclosure
- Keep written records of any information or findings, ensuring these are stored appropriately and confidentially.
- Discuss any limitations of investigation with discloser (if known).
- If applicable, inform the individual against whom a matter has been raised as soon as practicable, to ensure they are given a fair opportunity to respond.

- Keep the discloser informed as required throughout the investigation, including:
  - actions taken
  - planned next steps
  - where no action has been taken, the reason for this
- Update the ACS continuous improvement plan and assign actions for follow up, e.g. including:
  - review and updating of ACS policies and processes
  - additional training for staff
  - review of systems or resources in use
  - maintenance or repair of equipment or facilities
  - additional communication or consultation with stakeholders.

### Training

ACS staff and responsible persons are provided with the Whistleblower Protection policy and process and are made aware of and understand their roles and responsibilities in the system

It is a requirement that all ACS staff and responsible persons comply with the ACS whistleblower system.

Appropriate training is provided to ACS staff and responsible persons on how the system works, including:

- how to handle personal information and data
- how to recognise and respond to disclosures that qualify for protection under the Act
- managing relationships and communicating with disclosers
- when and how to escalate disclosures in the system
- their roles and responsibilities in the system
- the penalties for contravening the Act

Training is provided at regular intervals (at least annually) and

- when a person becomes a staff member or responsible person
- when there is a change to how the system works that affects the person's roles and responsibilities in the system;
- when there is a change to the person's role that affects the person's roles and responsibilities in the system.

### Communication

ACS will:

- publish this policy in an accessible document (via ACS website)
- give this policy to staff and responsible persons
- give the policy to the following:
  - individuals to whom the provider delivers funded aged care services
  - a person who requests the policy and is a supporter of an individual to whom the provider delivers funded aged care services
  - any other person who requests the policy
- translate the policy into another language or present the policy in an alternative appropriate format to allow for better understanding where required.
- help individuals receiving funded aged care and supporters of an individual who request the policy to understand how the whistleblower system works.
- communicate regularly (at least monthly) to staff and responsible persons and individuals receiving funded aged care and supporters of an individual who request the policy that disclosures that qualify for protection under the Act are welcome.

The system is reviewed as required, and at least annually, to ensure that it is meeting the above requirements.



Potential disclosers can obtain further information regarding Whistleblower protections prior to making a disclosure by contacting the Aged Care Quality and Safety Commission on 1800951822. If at any time disclosers suspect that there has been a breach of this policy or any other requirement under Whistleblower protection in the Act, they should report it directly to the Commission. They can apply through the courts for compensation, injunctions and other legal remedies or actions.

### Appendix 1: Whistleblower System Flowchart

(follows from Feedback and Complaints Flowchart in the ACS-Feedback and Complaints policy and process)



## References

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Whistleblowing	Australian Securities and Investment Commission	
<a href="#">Whistleblower Protections</a>	Australian Charities and Not-for-profits Commission	