Whistleblower

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Background

The organisation is committed to acting with integrity in accordance with our purpose and values. This policy encourages people to recognise and report any misconduct or wrongdoing or other conduct that is against our purpose and values. Following disclosure, the organisation will protect the whistleblower and ensure they do not experience any adverse consequences as a result. While this policy is designed to support and protect all whistleblowers, formal protection under the *Corporations Act* can only be accessed where the disclosure relates to a disclosable matter.

As stated in the ASIC Regulatory Guide 270, “transparent whistleblower policies are essential to good risk management and corporate governance. They help uncover misconduct that may not otherwise be detected. Often, such wrongdoing only comes to light because of individuals (acting alone or together) who are prepared to disclose it, sometimes at great personal and financial risk.”

This whistleblower policy outlines how the organisation supports and protects whistleblowers in accordance with the *Corporations Act 2001* (Cth).

Definitions

Whistleblower	Any person who discloses or reports actual or suspected misconduct or wrongdoing
Disclosable matters	Information that concerns ‘misconduct’ or ‘an improper state of affairs’ or circumstances in relation to the company Conduct the company, its officers or employees have engaged in which constitutes an offence or contravention of various laws, including any law of the Commonwealth punishable by imprisonment for a period of 12 months or that represents a danger to the public or financial system
Misconduct	Illegal, unacceptable or undesirable conduct or behaviour (actual or attempted) that is: dishonest, unethical, fraudulent, corrupt, non-compliant or may give rise to questionable accounting or auditing practices, may cause financial loss, or acts inconsistent with the organisation’s purpose, values and code of conduct.

Wrongdoing	Any action or conduct that: • is illegal or corrupt, such as theft, fraud or other misuse of MannaCare funds, equipment or other resources; • is unethical, such as dishonestly altering MannaCare records, engaging in questionable accounting practices; or willfully breaching MannaCare's Code of Conduct or other ethical standards; • constitutes an abuse of authority (where not an employment grievance); • constitutes a serious breach of safety; • causes or could cause any other serious harm to the public, a consumer, empolyee or volunteer at MannaCare; • is damaging or has the potential to damage public trust in MannaCare or the reputation of MannaCare in any quarter; • may cause financial or otherwise be detrimental to the interests of MannaCare • involves any other damaging conduct or serious impropriety including retaliatory action against a whistleblower for having made a report of wrongdoing.

Scope

This policy applies to all employees, volunteers, directors, members, consumers of MannaCare as well as to any member of the public.

Applicability
• all categories of employees • governing body • all volunteers • contractors and consultants, whether or not they are employees • all other service providers and suppliers

Consumer outcome

I get quality care and services when I need them from people who are knowledgeable, capable and caring.

Organisation statement

The workforce is recruited, trained, equipped and supported to deliver the outcomes required by these standards.
Governing regulations for this policy

- Corporations Act 2001 (Cth)
- Standard 7 (3)(d) Workforce recruitment, training, equipping and support
- Whistleblowers Protection Act 2019

Policy Commitment

The organisation is committed to supporting whistleblowers report any misconduct or wrongdoing and protecting them from any adverse consequences following disclosure. Examples of misconduct or wrongdoing include illegal acts, fraud or misappropriation of funds, breach of legal or regulatory duty, and any act that puts at risk public safety. Personal work-related grievances, such as

conflict with another employee or concerns about the employment contract, does not constitute misconduct or wrongdoing for the purposes of this policy.

The organisation seeks to identify and respond early to any misconduct, wrongdoing and disclosure by:

- Supporting potential whistleblowers access appropriate information e.g. through the Human Resources or Legal department or seeking independent legal advice.
- Allowing disclosures to be made internally or externally, anonymously and/or confidentially, securely and outside of business hours.
- Taking all reasonable steps to support whistleblowers acting with reasonable and honest belief following disclosure and during and after the investigation.
- Not tolerating any threats, acts or omissions designed to cause detriment to a whistleblower (or another person) in relation to a disclosure. This includes dismissal or termination, demotion, reputational damage or injury or damage to person or property.
- Conducting investigations in a fair, objective and confidential manner. Taking appropriate corrective action as warranted by the investigation.
- Ensuring fair treatment of any individuals mentioned in the disclosure informed by the principles of natural justice.
- Ensuring no disciplinary action is taken against a whistleblower when the disclosure was made with a genuine or reasonable belief regarding the misconduct, even when that allegation is incorrect.
- Allowing whistleblowers to make a disclosure to a regulator, legal practitioner. Whistleblowers may also make an emergency or public interest disclosure to a journalist or parliamentarian.
- Supporting whistleblowers to access legal remedy or compensation where they have experienced detriment as a result of disclosure.

Detriment Protection

The whistleblower (and those related to the whistleblower) will be protected from detriment by any person internal or external to the organisation. Actions that are not detrimental, include:

- Administrative action that is reasonable for the purpose of protecting a discloser from detriment.
- Managing a discloser's unsatisfactory work performance, if the action is in line with the organisation’s performance management framework.

Actions to be taken

Measures to protect a whistleblower from detrimental acts include:

- Support services (including counselling or other professional or legal services) that are available to whistleblowers.
- Should the whistleblower feel it necessary, the organisation will reassign the whistleblower to another location, to a role of the same level.
- The organisation can make modifications to the whistleblowers workplace or the way they perform their work duties.
- The organisation can reassign or relocate other workers involved in the disclosable matter.
- Management will be reminded of their responsibilities when managing the performance or taking other action relating to a whistleblower.
- Should the whistleblower feel that they have suffered detriment, they may lodge a complaint to the responsible person which will then be investigated by the investigating officer. Interventions will be implemented upon the detriment being proven true.

Identity protection

The whistleblowers identity and information will be kept confidential, unless:

- they provide you with consent to disclose their information

- the information is disclosed, when:
    - the information does not include the disclosers identity
    - the organisation 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 the issues raised in the disclosure
- their identity is disclosed to:
    - the Australian Securities and Investments Commission (ASIC)
    - a member of the Australian Federal Police
    - a legal practitioner, to obtain legal advice or legal representation in relation to the whistleblowing laws, or
    - anyone else prescribed by the regulations.

Information may only be disclosed if it is necessary for the purposes of investigating the disclosure.

Actions to be taken

Reducing risk of identity disclosure:

- All personal information or reference to the whistleblower witnessing an event will be redacted.
- The whistleblower will be referred to in a gender neutral context.
- Where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them.
- Disclosures will be handled and investigated by qualified workers.

Secure record keeping and information sharing:

- 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 discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser.
- Communications and documents relating to the investigation of a disclosure will not be sent to an email address or to a printer that can be accessed by other workers.
- Each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

Compensation and other remedies

the whistleblower will be provided with additional support and compensation through the courts if:

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

Whistleblowers are encouraged to seek independent legal advice.

Civil, criminal and administrative liability protection

the whistleblower will be provided with protections from:

- civil liability (e.g. any legal action taken as a result of whistleblowing)
- criminal liability (e.g. attempted prosecution for unlawfully releasing information)
- administrative liability (e.g. disciplinary action for making the disclosure).

Note: the protections do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

Should a whistleblower feel that any of their protections have been breached, they can submit a complaint to the responsible persoor to ASIC. It is also advised that they seek independent legal advice.

Penalties for breach of whistleblower protection

Severe civil and criminal penalties will apply to those who breach the protections provided to whistleblowers under the Act. Courts are empowered to make orders for relief against a company if they fail to protect a whistleblower from detriment. Applicable penalties under the Act may apply.

Reporting internally

Reports made by a whistleblower must be based on reasonable grounds and be a disclosable matter. The report should (where possible) be in writing and contain details of:

- the nature of the disclosable matter
- the person responsible for the disclosable matter
- the facts on why the whistleblower believes the disclosable matter has occurred
- (if known) the nature and whereabouts of any further evidence that supports the report.

All disclosable matters must be treated as confidential and (without the whistleblowers consent) must not be disclosed to anyone not connected with the investigation. Unless the responsible person is obliged to do so by law. If the whistleblower wishes to make their report anonymously, their wish is honoured unless overridden by due process of law. However, there may be difficulties with keeping them updated with relevant information as a result of remaining anonymous.

Workers need to be aware that only disclosable matters are covered by this policy. Disclosures, such as a personal work-related grievance, do not qualify for protection under the Act.

Investigation

The responsible person will need to assess each disclosure made to determine:

- whether whistleblower protections will apply (if unsure, proceed as if they do apply), and
- if a formal, in-depth investigation is required.

It is important that the responsible person and investigating officer focus on the substance of the disclosure, not possible motives for the whistleblower to have made the disclosure. Whistleblowers are not required to act in good faith to be protected.

If an investigation is necessary, the responsible person will arrange for an investigating officer to conduct an investigation to determine the legitimacy of the allegations. The investigation is to be conducted thoroughly, but with the aim to conclude the investigation as early as possible.

The whistleblower, subject to privacy and confidentiality considerations, will be kept informed of the investigation process and (where appropriate) its outcome. They must maintain full confidentiality of any information they receive.

The person who is subject to a disclosure also needs to be informed about the investigation. However, this can be at any time so long as it is before making any adverse findings against them. This is in the event there may be concerns that the individual will destroy information or the disclosure needs to be referred to ASIC or the Federal Police. A worker who is subject to the disclosure may contact the organisation’s support services (e.g. counselling).

When conducting an investigation, the investigating officer must:

- address all relevant questions
- conduct the investigation under strict confidence
- observe the rules of natural justice
- meet with the person upon whom the allegations are against, allowing them the opportunity to comment beforehand (according to the rules of natural justice)
- compile all the information into an investigation report for further review.

The investigation report will include:

- the allegations
- comments by the person the allegations are against, with considerations by the investigating officer
- a statement of all relevant findings, with the evidence provided
- the conclusions reached (including the damage caused and the impact on the organisation and other affected parties) and the reasoning behind it
- recommendations based upon those conclusions.

At the end of the investigation, the responsible person will be provided a copy of the investigation report and be consulted in regards to a decision on the matter. If the police are to be involved, this is to be done at the earliest possible opportunity.

Should the whistleblower not be content with the outcome of the investigation, they can request the investigation be reopened. The organisation is not obligated to reopen an investigation if it feels it is unnecessary and that the prior investigation was conducted properly. A further complaint can still be made to ASIC should the whistleblower still feel dissatisfied.

Note: It may not be possible to undertake an investigation if not enough information was provided and the disclosure was made anonymously and it is not possible to contact the whistleblower.

False and malicious reports

Workers should take care not to make deliberately false or malicious disclosures. Workers found (by the investigating officer) to have made such a disclosure will be subject to disciplinary action, including possible termination of employment.

Reporting externally

Workers are still covered by the whistleblowers protections if they wish to report their concerns to ASIC, even if they have not raised their concerns internally first. A report can be lodged through ASIC's online misconduct reporting form or by writing to ASIC. Concerns can be made to ASIC anonymously; however, ASIC will not be able to follow up for further information or advise what steps can be taken based on the information provided. However, anonymous reports still qualify for whistleblower protections.

Other people who can receive a disclosure include:

- legal practitioners
- regulatory bodies (e.g. ASIC) and other external parties (if authorised by the organisation), and
- (under certain circumstances) journalists and members of Commonwealth, state or territory parliaments.

Responsibilities of workers

Responsibilities of workers are to:

- be familiar with and regularly review this policy and related processes
- report any disclosable matters

- ensure reports of disclosable matters are private and confidential.

Responsibilities of the investigating officer

Responsibilities of the investigating officer is to:

- remain unbiased throughout the investigation
- ensure the scale of the investigation is in proportion to the seriousness of the wrongdoing
- ensure the investigation is completed in a fast and efficient manner
- examine relevant documents and evidence
- maintain strict confidentiality throughout the investigation
- conduct interviews with relevant witnesses
- keep accurate and clear records.

Responsibilities of the Executive Team

Responsibilities of the Executive Team is to:

- regularly review and memorise this policy and related processes
- appoint an investigating officer
- ensure sufficient resources are allocated to the investigating officer
- ensure all reports by whistleblowers are investigated to the necessary degree.

Responsibilities of the chair of the board

In the event the Executive Team is the person the allegations are placed against, the chair will have the same responsibilities as the Executive Team.

References

Name	Source	
Whistleblowing Information	Australian Securities and Investment Commission	