

8.3.5 WHISTLEBLOWERS PROCEDURE



Overview¹

Meracare is committed to enabling the reporting of wrongdoing within the organisation and supports this through the promotion of a workplace free of unacceptable behaviour and serious misconduct. We are committed to addressing and investigating reported misconduct and rectifying proven wrongdoing.

This policy is endorsed by the Governing Body following consultation with an employee forum to ensure it supports simple and clear reporting and resolution processes in response to the identification of illegal, inappropriate or unethical conduct.

Purpose of our whistleblower policy²

The purpose of our Whistleblower policy is to:

- Encourage more disclosures of wrongdoing
- Help deter wrongdoing, in line with our risk management and governance framework
- Ensure individuals who disclose wrongdoing (disclosers) can do so safely, securely and with confidence that they will be protected and supported
- Ensure discloser's reports (disclosures) are dealt with appropriately and on a timely basis
- Provide transparency around our process for receiving, handling and investigating disclosures
- Support our values and code of conduct
- Support our long-term sustainability and reputation and
- Meet our legal and regulatory obligations.

If we are to achieve this purpose it is important that all employees (and non-employees) who are aware of possible wrongdoing have the confidence to speak up knowing that they are fully supported by Meracare and the Whistleblower legislation.

Who the policy applies to³

This policy applies to individuals who are or have been any of the following in Meracare Aged Care:

- An officer or employee (e.g. current and former employees who are permanent, part-time, fixed-term or temporary, interns, managers, and Governing Body members/directors)
- A supplier of services or goods (whether paid or unpaid), including their employees (e.g. current and former contractors, consultants, service providers and business partners)
- An associate of Meracare and
- A relative, dependent or spouse of an individual (e.g. relatives, dependents or spouse of current and former employees, contractors, associates)

A discloser qualifies for protection as a Whistleblower under the Corporations Act if they are an eligible Whistleblower, as per the above, and:

- They have made a disclosure of information relating to a 'disclosable matter' directly to an 'eligible recipient' (see below, Who can receive a disclosure) or to ASIC, APRA or another Commonwealth body prescribed by regulation;

¹ Information on Whistleblowers is taken from: Australian Government Australian Securities and Investment Commission (ASIC) [Regulatory Guide 270: Whistleblower Policies](#) (A copy is included in Forms/Resources)

² ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.39 to 270.40

³ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.41 to RG270.46

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- They have made a disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the Whistleblower provisions in the Corporations Act or
- They have made an 'emergency disclosure' or 'public interest disclosure' (see below, Matters the policy applies to).

Matters the policy applies to⁴

Meracare Aged Care's Whistleblower policy covers the following types of wrongdoing:

- Physical, psychological or other abuse of a consumer of our service
- Receiving gifts or monies from a consumer of our service without the permission of a senior manager
- Illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property
- Fraud, money laundering or misappropriation of funds
- Offering or accepting a bribe
- Financial irregularities
- Failure to comply with, or breach of, legal or regulatory requirements
- Engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure.

Disclosable matters include conduct that may not involve a contravention of a particular law. Information that indicates a significant risk to public safety or the stability of, or confidence in, the financial system is also a disclosable matter, even if it does not involve a breach of a particular law.

A discloser can still qualify for protection even if their disclosure turns out to be incorrect, with the exception of deliberate false reporting.

Exclusions

Staff grievances are not included as part of the Whistleblower procedure as these are managed through the grievance procedure (see 7.5.1 Staff Under Performance/ Process for dealing with underperformance).

Consumer complaints about service delivery are also excluded and are managed through the consumer complaints process (see 6.2 Consumer Complaints).

Who can receive a disclosure⁵

Meracare has identified below the 'eligible recipients' who can receive disclosures that qualify for protection of the Whistleblower. A Whistleblower needs to make a disclosure directly to one of the below eligible recipients to be able to qualify for protection as a Whistleblower under the Corporations Act (or the Taxation Administration Act, where relevant).

If a person wishing to make a disclosure would like to access some advice before lodging a disclosure, they can seek advice from any of the internal or external eligible recipients.

⁴ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.47 to RG270.63

⁵ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.64 to 270.78

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Internal eligible recipients

Meracare would like to identify and address wrongdoing as early as possible and encourages Whistleblowers to make a report to senior management in the first instance.

Governing Body members and members of the Management Team (BOM and facility Managers) are nominated officers of Meracare to receive disclosures.

Additionally, our Employee Assistance Program (EAP) have the appropriate skills and knowledge to receive the information and are nominated by Meracare to receive disclosures.

Any eligible recipient who is implicated in a disclosure is not involved in any aspect of receiving, handling or investigating the disclosure except as per the below section, Ensuring fair treatment of individuals mentioned in a disclosure.

External eligible recipients

Whistleblowers can also report a disclosure to:

- Regulatory bodies or law enforcers relevant to the report. For example, breaches of company law can be reported to ASIC (Australian Securities and Investment Commission), breaches of tax law can be reported to the ATO (Australian Taxation Office) and breaches of financial requirements can be reported to APRA (Australian Prudential Regulation Authority).
- Legal practitioners.
- Journalists or members of Commonwealth, state or territory parliaments (parliamentarians), for public interest or emergency disclosures.

The criteria for making a public interest or emergency disclosure are specified in the ASIC Regulatory Guide 270: Whistleblower Policies⁶. Note that a disclosure must have previously been made to ASIC, APRA or a prescribed body and written notice provided to the body to which the disclosure was made. In the case of a public interest disclosure, at least 90 days must have passed since the previous disclosure. A discloser should contact an independent legal adviser before making a public interest disclosure or an emergency disclosure.

Whistleblowers can also report other misconduct to ASIC and if not in their remit, ASIC may refer the discloser to another regulator or law enforcer.

In all cases the Whistleblower is still able to access the Whistleblower protections available under the Whistleblower legislation if the discloser is deemed a Whistleblower.

How to make a disclosure⁷

A discloser can report a disclosure to any eligible recipient in person, by telephone, email or letter at any time.

Contact details of eligible recipients in Meracare can be obtained from the Internal Telephone Directory or from reception. The contact details for the EAP are readily available at all homes:

Anonymous disclosures

If a discloser wishes to notify an issue anonymously, they can advise the EAP who will advise a nominated person within Meracare agreed to by the staff person without identifying the discloser.

⁶ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.79 to 270.86

⁷ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.79 to 270.86

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(See 7.5.4 Employee Assistance Program.) Persons making anonymous disclosures are still protected by the Whistleblower legislation.

A discloser can choose to remain anonymous while; making a disclosure, over the course of the investigation and after the investigation is finalised. A discloser can refuse to answer questions that they feel could reveal their identity, including during follow-up conversations.

Where a person wishes to remain anonymous, Meracare would appreciate it if they maintain ongoing two-way anonymous communication so we can ask follow-up questions or provide feedback. At no time will we pressure an anonymous discloser to reveal their identity.

Communication with disclosers can be through anonymous telephone hotlines and anonymised email addresses; and a discloser may adopt a pseudonym for the purpose of their disclosure if their identity is known to their supervisor, the eligible recipient in Meracare or the EAP.

Legal protections for disclosers⁸

Legal protections for disclosers are described below. These protections apply to internal disclosures, disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Corporations Act.

Identity protection

Meracare cannot disclose the identity of a discloser or information that is likely to lead to the identification of a discloser which we have obtained directly or indirectly because the discloser made a disclosure that qualifies for protection.

The exception is if a person discloses the identity of the discloser:

- To ASIC, APRA, or a member of the Australian Federal Police (within the meaning of the Australian Federal Police Act 1979)
- To a legal practitioner (for the purposes of obtaining legal advice or legal representation about the Whistleblower provisions in the Corporations Act)
- To a person or body prescribed by regulations or
- With the consent of the discloser.

Meracare can disclose the information contained in a disclosure with or without the discloser's consent if:

- The information does not include the discloser's identity
- We have 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.

It is illegal for a person to identify a discloser or disclose information that is likely to lead to the identification of the discloser, outside the exceptions noted above. If the identity of a discloser is disclosed the discloser can lodge a complaint with Meracare about the breach of confidentiality. The discloser can also lodge a complaint with a regulator, such as ASIC, APRA or the ATO, for investigation.

⁸ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.87 to 270.105

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Protection from detrimental acts or omissions

Disclosers are protected from detriment in relation to a disclosure. This means no person can engage in actions or make a threat towards you because of your disclosure or planned disclosure.

The following are prohibited under law:

- Dismissal of an employee
- Injury of an employee in his or her employment
- Alteration of an employee's position or duties to his or her disadvantage
- Discrimination between an employee and other employees of the same employer
- Harassment or intimidation of a person
- Harm or injury to a person, including psychological harm
- Damage to a person's property
- Damage to a person's reputation
- Damage to a person's business or financial position or
- Any other damage to a person.

Actions that are not considered detriment include:

- Moving a person to a different workspace to prevent detriment to them and
- Managing unsatisfactory work performance, if the action is in line with our performance management framework (see 7.5.1 Staff Underperformance/Process for dealing with underperformance).

Compensation and other remedies

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

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

Civil, criminal and administrative liability protection

A discloser is protected from any of the following in relation to their disclosure:

- Civil liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation)
- Criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution, other than for making a false disclosure) and
- Administrative liability (e.g. disciplinary action for making the disclosure). Note that the protections do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

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Support and practical protection for disclosers⁹

Identity protection (confidentiality)

Meracare has the following measures and/or mechanisms for protecting the confidentiality of a discloser's identity (where applicable).

- To reduce the risk that the discloser will be identified from the information contained in a disclosure, we:
 - Redact all personal information or reference to the discloser witnessing an event
 - The discloser is 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 and
 - Disclosures are handled and investigated by qualified staff.
- Securing record-keeping and information-sharing processes
 - 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 staff and
 - 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.

Whilst Meracare does endeavour to protect the confidentiality of a discloser's identity, in practice, people may be able to guess the discloser's identity if:

- The discloser has previously mentioned to other people that they are considering making a disclosure
- The discloser is one of a very small number of people with access to the information or
- The disclosure relates to information that a discloser has previously been told privately and in confidence.

Protection from detrimental acts or omissions

Meracare will work closely with a discloser to protect them from detriment. This includes:

- Assessing the risk of detriment through our risk management process (see 8.10 Risk management)
- Linking the discloser to available support services that they may wish to access including services provide by our EAP (See 7.5.4 Employee Assistance Program)
- Identifying strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation

⁹ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.106 to 207.110

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- Taking action to protect a discloser from risk of detriment—for example, allowing the discloser to perform their duties from another location, reassign the discloser to another role at the same level, make other modifications to the discloser’s workplace or the way they perform their work duties, or reassign or relocate other staff involved in the disclosable matter
- Ensuring that the Governing Body and senior management are aware of their responsibilities to maintain the confidentiality of a disclosure, address the risks of isolation or harassment, manage conflicts, and ensure fairness when managing the performance of, or taking other management action relating to, a discloser
- A complaint from a discloser that they have suffered detriment will be investigated as a separate matter by an officer who is not involved in dealing with disclosures and the investigation findings will be provided to the Senior Management Team and the Governing Body informed of any action to be taken. Action could include taking disciplinary action, allowing the discloser to take extended leave, developing a career development plan for the discloser that includes new training and career opportunities, or offering compensation or other remedies

Handling and investigating a disclosure¹⁰

Handling a disclosure

When Meracare receives a disclosure either from the discloser, the EAP or a regulatory body the following key steps apply. When handling a disclosure, the above points related to legal protections for disclosers and support and practical protection for disclosers are meticulously adhered to.

- A sub-committee of the Leadership Team (the subcommittee) comprising two to three members is formed within one week to receive, review and act on the disclosure. Leadership Team members are trained in the process to manage disclosures.
- Leadership Team members potentially implicated in the perceived unacceptable behaviour/misconduct will be excluded from the management and investigation of the disclosure and, if necessary, an impartial person from outside the organisation will be appointed.
- The subcommittee will be convened within two weeks to review and assess the disclosure to determine whether:
 - it qualifies for protection and
 - if a formal, in-depth investigation is required
- If the disclosure qualifies (not an anonymous disclosure) an invitation is made to the discloser to discuss the disclosure in person with the subcommittee at a time and place that they feel comfortable with.
- The focus of the discussion is on the substance of a disclosure, rather than what the subcommittee believe to be the discloser’s motive for reporting. It is also important for the subcommittee not to 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.
- Where there is uncertainty around the status of the disclosure specialist advice may be sought.
- The discloser is advised within two weeks after the review/meeting whether the disclosure:
 - qualifies for protection and
 - if a formal, in-depth investigation is required.

¹⁰ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.111 to 207.124

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Investigating a disclosure

When investigating a disclosure the subcommittee endeavours to complete the investigation as quickly as possible and within one month of commencing the investigation, while acknowledging that the process may vary depending on the nature of the disclosure.

The subcommittee will not disclose information that is likely to lead to the identification of the discloser as part of its investigation process, unless:

- The information does not include the discloser's identity
- We remove information relating to the discloser's identity or other information that is likely to lead to the identification of the discloser (e.g. the discloser's name, position title and other identifying details) and
- It is reasonably necessary for investigating the issues raised in the disclosure.

The subcommittee may not be able to undertake an investigation if it is not able to contact the discloser (e.g. if a disclosure is made anonymously and the discloser has refused to provide, or has not provided, a means of contacting them). In this case we may investigate a disclosure by endeavouring to contact the discloser to obtain consent to a limited disclosure to the subcommittee.

The subcommittee may also investigate a disclosure by conducting a broad review on the subject matter or the work area disclosed. In addition, we may investigate an anonymous disclosure, even if we cannot get in contact with the discloser, if the discloser has provided sufficient information to us and we remove information that is likely to lead to the identification of the discloser.

In investigating a disclosure, the subcommittee will determine:

- The nature and scope of the investigation
- The person(s) within and/or outside the entity that should lead the investigation
- The nature of any technical, financial or legal advice that may be required to support the investigation and
- The timeframe for the investigation.

The subcommittee will also make sure that investigations are objective, fair and independent, while preserving the confidentiality of the investigation, through:

- Being independent of the discloser, the individuals who are the subject of the disclosure, and the business unit involved and
- Undertaking investigations jointly with professional assistance, if required.

Keeping a discloser informed

The subcommittee will provide regular updates to a discloser during the key stages, including:

- When the investigation process has begun
- While the investigation is in progress and
- After the investigation has been finalised.

How the investigation findings will be documented, reported internally and communicated to the discloser

The method for documenting and reporting the findings will depend on the nature of the disclosure noting that there may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

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Generally, the findings will be documented by the subcommittee and forwarded to the CEO or other relevant senior staff person who will review them and the processes to ensure Meracare processes and procedures had been adhered to. If necessary, additional actions may be taken.

Once the findings are confirmed they are forwarded to the Governing Body for review.

The findings are then provided to the discloser and any other people involved in the report.

Review of Findings

The discloser can request a review of the findings and/or the process. If the review proceeds it will be conducted by an officer who is not involved in handling and investigating the disclosure. The review findings are provided to the subcommittee, the EDON/GM and the Governing Body.

Meracare is not obliged to reopen an investigation and it can conclude a review, if it finds that the investigation was conducted properly, or new information is either not available or would not change the findings of the investigation.

The discloser is advised that they may lodge a complaint with a regulator, such as ASIC, APRA or the ATO, if they are not satisfied with the outcome of the investigation.

Ensuring fair treatment of individuals mentioned in a disclosure¹¹

Meracare ensures the fair treatment of its employees who are mentioned in a disclosure that qualifies for protection, including those who are the subject of a disclosure.

Measures and/or mechanisms for ensuring fair treatment of individuals mentioned in a disclosure include the following as applicable:

- Disclosures will be handled confidentially, when it is practical and appropriate in the circumstances
- Each disclosure will be assessed and may be the subject of an investigation
- The objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported
- When an investigation needs to be undertaken, the process will be objective, fair and independent
- An employee who is the subject of a disclosure:
 - is entitled to the presumption of innocence until proven otherwise and is offered support by an EAP representative (the EAP representative is not the same person supporting the discloser)
 - will be advised about the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness and prior to any actions being taken, for example, if the disclosure will be the subject of an investigation
 - may contact other available support services (e.g. counselling).

The subcommittee will determine the most appropriate time to inform the individual who is the subject of a disclosure about the investigation, provided they inform the individual before making any adverse finding against them. In some circumstances, informing the individual at an early stage of an investigation may compromise the effectiveness of the investigation, such as when

¹¹ ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.125 to 207.127

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there may be concerns that the individual may destroy information or the disclosure needs to be referred to ASIC, APRA, the ATO or the Federal Police.

Ensuring the policy is easily accessible to all stakeholders¹²

Disclosers within Meracare Aged Care

Meracare strives to ensure all staff and other stakeholders are aware of and have access to our Whistleblower policy through:

- Holding staff briefing sessions
- Discussing the policy in staff team meetings
- Posting the policy on the staff intranet
- Making a copy available in the staff lunchroom
- Providing a printout through reception on request from staff
- Posting information on staff notice Boards
- Including the policy as mandatory training
- Including the policy in the employee handbook and
- Incorporating the policy in employee orientation information and training for new staff
- Providing staff with a copy of the completed and signed Staff/Volunteer Orientation Checklist, which includes references to ASIC information on whistle blowing and advising of the availability of printed copies on request
- Promotion of the policy by senior management in meetings with staff and communications to staff.

Upfront and ongoing education and training

Meracare provides the following education and training to all staff and senior management to ensure they are aware of our Whistleblower policy and that all levels of management, particularly line managers, receive appropriate training in how to effectively deal with disclosures.

Staff training includes:

- Key arrangements of the entity’s Whistleblower policy, processes and procedures, including:
 - practical examples of disclosable matters
 - practical information on how to make a disclosure and
 - advice on how disclosers can seek further information about the policy if required
- Information related to protecting and supporting disclosers, including:
 - the measures the entity has in place for protecting and supporting disclosers
 - practical working examples of conduct that may cause detriment to a discloser and
 - the consequences for engaging in detrimental conduct
- Information about matters that are not covered by the entity’s policy, including
 - practical examples of personal work-related grievances
 - information on the entity’s other policies (e.g. on bullying and – harassment, workplace health and safety, grievance and code of conduct matters)

¹² ASIC [Regulatory Guide 270: Whistleblower Policies](#) 2019 RG 270.128 to 207.139

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- information on how and where employees can report general employee feedback or personal work-related grievances and
- practical examples of circumstances where disclosure has led to positive outcomes for the Meracare and the discloser.

The management team from which our Whistleblower subcommittee is selected, receive training in the processes and procedures for receiving and handling disclosures, including training relating to confidentiality and the prohibitions against detrimental conduct. This training is provided by our EAP who specialise in Whistleblower processes and support.

Governing Body members also receive training in Meracare Aged Care's commitment and obligations to protecting disclosers of wrongdoing and their role in supporting and protecting Whistleblowers and the processes to be followed. It also covers how the Whistleblower policy fits in with other policies such as bullying and harassment. Again, this training is provided by the EAP as part of the orientation training for Governing Body members after each AGM.

Disclosers outside of Meracare can access our Whistleblower policy (minus names and positions) through our website.

Monitoring and reporting on the effectiveness of the policy

A report is provided to the Governing Body on every disclosure and includes:

- The subject matter of the disclosure
- The status
- The type of person who made the disclosure (e.g. employee or supplier) and their status (e.g. whether they are still employed or contracted)
- The action taken
- How the disclosure was finalised
- The timeframe for finalising the disclosure and
- The outcome of the disclosure.

The Whistleblower policy is reviewed and updated (if necessary) following completion of a disclosure and when there are legislative changes related to Whistleblower requirements to ensure it remains adequate.

Reviews and updates are conducted through our continuous improvement process (see 8.9 Continuous Improvement).

Changes to legislative requirements are managed through our regulatory compliance process (see 8.8 Regulatory Compliance).

8.3.6 CORPORATE CALENDAR

The General Manager is responsible for maintaining a Corporate Calendar detailing:

- Meeting dates
- Management report dates
- Funding report dates
- Contract review dates

The Business Operations Manager is responsible for maintaining the following:

- Policy and procedures reviews

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- Scheduled Audits
- Scheduled surveys
- Review of key documents (e.g. Consumer Handbook, Service Agreements)

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